

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY FORTY-THREE

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Monday, April 6, 2015
9:59 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

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I N D E X

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P R O C E E D I N G S

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 9:59 a.m.)

THE CLERK: Be seated.

THE COURT: Good morning, counsel.

COUNSEL IN UNISON: Good morning.

THE COURT: Good morning, jurors.

THE JURORS: Good morning, your Honor.

THE COURT: I have two major responsibilities in a trial such as this. The first is almost over, and that is to preside over the case and to make whatever procedural or evidentiary rulings are necessary in the course of the trial. And you've seen that we've been doing that. The other major responsibility is at this stage of the proceedings to give you what we call these instructions in the principles of law that pertain to the matters you've heard about and about which you will have to make some decisions. So I'm now going to give you these instructions about the law that applies to these matters.

You can think of this as sort of a short course in all the law you will need to know in order to decide the issues in the case. So you shouldn't have to resort to any other ideas that you might have from any other sources about what the law is or might be with respect to these issues, but take it that what I will tell you is a complete and accurate summary of the principles of law that are to be applied in the case. It is my

1 duty to set forth these principles fully and accurately without
2 regard to any personal or private views I might have about the
3 wisdom or prudence of these principles or whether there might
4 be different or additional ones that could be applied, but
5 rather to tell you what the law is with respect to these
6 matters.

7 You have a similar duty to accept and faithfully apply
8 these principles sensibly without any regard to any personal or
9 private views you might have about the wisdom or prudence of
10 these principles or whether there might be different or
11 additional ones that could be applied. Instead, accept that
12 these are the principles of law that apply to these matters,
13 consider these instructions sensibly as a whole and apply them
14 faithfully.

15 These instructions will be lengthy but we will give
16 you a written copy of them for the jury room so that you may
17 review them and be reminded of them any time you wish to look
18 at them while you're deliberating.

19 I'm going to talk about two general areas, and I'm
20 going to divide my time in doing it. First I'm going to talk
21 about the principles that relate to the particular offenses or
22 crimes that are charged by the indictment in this case. That
23 is, I will tell you what the government is required to prove in
24 order to convict the defendant of the charges that are made
25 against him. After I've done that, the lawyers for each side

1 will have their opportunity to present their closing statements
2 to you. I think it will be helpful to you in listening to the
3 closing statements to have understood from me what the
4 principles of law are that relate to the proof of the charges.
5 After the lawyers' closing statements, I'll have some more to
6 say to you about the manner in which you will think about the
7 evidence, discuss it and make some judgments about it.

8 Because some of the offenses that are at issue in this
9 case are rather involved, let me begin by giving you a bit of
10 introduction to federal criminal law. Federal criminal law
11 consists of laws enacted by Congress that define certain acts
12 as criminal. In enacting a criminal statute, Congress
13 specifies what act or acts constitute the particular crime. At
14 a trial when it is shown by the evidence that a defendant has,
15 in fact, committed the defined conduct, then the crime may be
16 said to have been proven, and where it has not been shown by
17 the evidence that the defendant committed the defined conduct,
18 the crime has not been proven.

19 Typically, the language of a federal criminal statute
20 follows a common pattern or formula that can be stated briefly
21 this way: Whoever does such and such shall be punished. Let
22 me give you a silly hypothetical example to illustrate the
23 grammar of federal criminal statutes. The statute might say,
24 hypothetically, "Whoever knowingly sells an item of apparel
25 without providing a certificate of origin, shall be punished."

1 I deliberately use a silly example because I want you to focus
2 on the structure of criminal statutes right now rather than the
3 substance.

4 In seeking to determine whether someone has committed
5 the hypothetical crime, we would look at what the evidence
6 established that the person had done and whether the person had
7 done those things outlined in the statute as necessary to
8 constitute the offense. So in the example, there would be
9 three things -- and we would refer to them as the elements of
10 the offense -- three things that would have to be shown: The
11 person knowingly sold an item of apparel without providing a
12 certificate of origin.

13 If those three things or elements were established as
14 facts, then the government would have proved the crime. If all
15 three things, all three things, are not established by the
16 evidence, that is, one or more of them has not been
17 established, then the crime has not been proven.

18 Sometimes Congress wants to be sure that a particular
19 term in a statute is understood in a particular way, and it may
20 include a full or partial definition of that term; for example,
21 in our illustration, the statute might say, "The term 'item of
22 apparel' shall include any garment or thing worn as clothing or
23 adornment, but shall not include hospital gowns." When
24 Congress provides a specific definition, then that definition
25 is what controls for the purpose of the statute. When Congress

1 does not provide a specific definition to the terms of the
2 statute, the general rule is that words are to be understood in
3 accordance with their ordinary and usual meaning.

4 Sometimes a criminal statute will provide for
5 alternate ways in which the offense could be committed. To
6 return to our example, the statute might say, "Whoever
7 knowingly sells an item of apparel without providing a
8 certificate of origin, or advertises for sale an item of
9 apparel for which no certificate of origin has been provided,
10 shall be punished."

11 In this formulation there are two ways the statute
12 might be violated: First, it could be proved that a person
13 knowingly sold an item of apparel without a certificate of
14 origin; second, it could be proved that the person advertised
15 for sale an item of apparel for which no certificate of origin
16 had been given.

17 Proof of either alternative would suffice to
18 constitute the crime. But in such a case because the verdict
19 of the jury must always be unanimous as to the elements of the
20 offense, it would be necessary for all the members of the jury
21 to agree that one or the other version had been proved beyond a
22 reasonable doubt and to be unanimous about that.

23 Sometimes a federal criminal statute will contain what
24 we call a "jurisdictional element." The federal government has
25 those powers that are granted to it by the Constitution. The

1 federal government's power to enact a criminal statute is
2 limited to those matters within its proper jurisdiction. For
3 example, the Constitution grants the federal government power
4 to regulate interstate and foreign commerce, and consequently,
5 the federal government can enact criminal laws that pertain to
6 the regulation of interstate and foreign commerce.

7 But selling or advertising an item of apparel might or
8 might not have interstate or foreign effect or impact. In
9 order to govern particular conduct that may be either federal
10 or non-federal, depending on the circumstances, Congress may
11 prescribe what we call a "jurisdictional element" to bring the
12 matter within federal jurisdiction; thus, the statute might
13 say, as some federal statutes do, "Whoever sells in interstate
14 commerce an item of apparel without a certificate of origin
15 commits the offense." Tying it to the specific power to
16 regulate is sometimes a necessary jurisdictional element of a
17 crime.

18 So I use this oversimplified illustration because I
19 want you to see the patterns that can occur in the statutes
20 that are at issue in this case. And I hope it will help you to
21 hear and understand the instructions about those particular
22 statutes.

23 Before I get to the instructions about the particular
24 statutes, there are some other general matters I want to
25 address. As I mentioned in my preliminary instructions to you

1 at the beginning of this case, there are various ways in which
2 a person can be criminally liable for an offense. The first is
3 when the person has personally and directly performed the acts
4 that constitute the offense. A person who has actually done
5 the acts which constitute the offense is said to have
6 personally committed what we call the "substantive offense."
7 To use our example, a person who personally sold an item of
8 apparel without providing a certificate of origin would be said
9 to have directly committed the substantive offense.

10 A person who has not personally done all of the acts
11 that constitute the crime may still be criminally responsible,
12 however. One circumstance in which this may be true is if the
13 person has aided or abetted another to commit the crime. A
14 person may be found guilty of a federal offense if he aids or
15 abets another person in committing that offense. In most of
16 the counts in the indictment, the defendant is charged with
17 aiding and abetting another person, namely, Tamerlan Tsarnaev,
18 to commit a substantive offense.

19 To "aid or abet" means intentionally to help someone
20 else commit the offense. To establish aiding and abetting, the
21 government must prove beyond a reasonable doubt, first, that
22 someone else committed the charged crime; second, that the
23 defendant consciously shared the other person's knowledge of
24 the underlying criminal act intended to help him, and willfully
25 took some part in the criminal endeavor seeking to help it

1 succeed.

2 An act is done willfully if it is done voluntarily and
3 intentionally.

4 A person who aids and abets another to commit a crime
5 need not be present when the underlying criminal act is
6 performed or be aware of all the details of its commission to
7 be guilty of aiding and abetting, but a general suspicion that
8 an unlawful act may occur or that something criminal is
9 happening is not enough.

10 Mere presence at the scene of a crime and knowledge
11 that a crime is being committed are also not sufficient to
12 establish aiding and abetting. To be guilty of aiding and
13 abetting, a person must act in some way to affirmatively assist
14 another person to commit a crime.

15 In every count where the defendant is charged both as
16 a principal actor and as an aider or abetter, you may find him
17 guilty if you unanimously conclude beyond a reasonable doubt
18 that he was either a principal or an aider or abetter or both.
19 You need not be unanimous as to whether he was a principal as
20 opposed to an aider or abetter, but to find him guilty each of
21 you must conclude that he was one or the other or both.

22 It can also be a crime to conspire or agree with one
23 or more other persons to work together to commit a substantive
24 offense. This is the crime of conspiracy. When proven,
25 conspiracy to commit an offense is a separate crime from the

1 substantive crime. The objective of the conspiracy might be to
2 commit the substantive crime.

3 In our illustration, two or more people could agree or
4 conspire together to sell an item of apparel without a required
5 certificate of origin. That would be a separate crime from the
6 act of selling.

7 In this case, three counts of the indictment present
8 allegations of the crime of conspiracy in various forms under
9 various statutes. In each of those counts the conspiracy is
10 alleged to have had as its object the commission of certain
11 identified substantive crimes. Specifically, the defendant is
12 charged in Counts 1, 6 and 11 of conspiring with Tamerlan
13 Tsarnaev to commit certain federal crimes.

14 A criminal conspiracy is an agreement to achieve an
15 unlawful end or a lawful end by unlawful means. The agreement
16 can be spoken or unspoken. It does not have to be a formal
17 agreement which the people involved have actually sat down
18 together and worked out all the details, although that might be
19 the case.

20 To prove a criminal conspiracy, the government must
21 prove beyond a reasonable doubt that those who are involved
22 shared an understanding of the unlawful nature of the crime
23 they were agreeing to commit. Mere similarity of conduct among
24 people or the fact they may have been associated with each
25 other, and even discussed common aims in interest, does not

1 necessarily establish proof of the existence of a conspiracy
2 although, of course, you may consider those factors.

3 Each of the three conspiracy counts charges the
4 defendant with conspiring to commit a different federal crime;
5 accordingly, you must consider each of those conspiracy counts
6 separately. You may find the defendant guilty on any
7 particular conspiracy count only if you unanimously conclude
8 beyond a reasonable doubt that the defendant conspired with
9 another to commit the federal crime charged in that particular
10 count and not some other crime.

11 Count One charges the defendant with conspiracy to use
12 a weapon of mass destruction. For you to find the defendant
13 guilty of that charge, you must unanimously find that the
14 government has proved the following two elements beyond a
15 reasonable doubt: First, that the defendant and another agreed
16 to use a weapon of mass destruction; and, second, that the
17 defendant knowingly and voluntarily joined in the agreement
18 intending that the crime of using a weapon of mass destruction
19 be committed.

20 Count Six charges the defendant with conspiracy to
21 bomb a place of public use. For you to find the defendant
22 guilty of that charge, you must unanimously find the government
23 has proved the following two elements beyond a reasonable
24 doubt: First, that the defendant agreed with another to bomb a
25 place of public use; and, second, that the defendant knowingly

1 and voluntarily joined in that agreement intending that the
2 crime of bombing a place of public use be committed.

3 Count Eleven charges the defendant with conspiracy to
4 maliciously destroy property. For you to find the defendant
5 guilty of that charge, you must unanimously find the government
6 has proved the following two elements beyond a reasonable
7 doubt: That the defendant agreed with another to maliciously
8 destroy property; and, second, the defendant knowingly and
9 voluntarily joined in that agreement intending that the crime
10 of malicious destruction of property be committed.

11 The government must prove both the defendant intended
12 to join the agreement and that the underlying crime be
13 committed. The government does not have to prove that a
14 defendant knew all the details of the conspiracy, that he
15 participated in every act of the agreement, or that he played
16 any particular role. It only needs to prove that the defendant
17 knew of and joined in the agreement with the intent that its
18 unlawful purpose be achieved.

19 A defendant's intent and knowledge can be proved with
20 either direct or circumstantial evidence, including inferences
21 from the surrounding facts and circumstances, such as the acts
22 done by the defendant that furthered or advanced a conspiracy's
23 objective.

24 A person who has no knowledge of a conspiracy but may
25 happen to act in a way somehow to further the objective of the

1 conspiracy does not become a coconspirator. He must knowingly
2 and intentionally join in the agreement with the purpose and
3 intention to do something unlawful.

4 For the crime of conspiracy, the government does not
5 have to prove that the conspiracy succeeded or that its
6 objective was achieved. The crime of conspiracy is complete
7 when the conspirators form their agreement to commit the
8 underlying offense.

9 Each of the three conspiracy counts in this indictment
10 also alleges a third element the government must prove beyond a
11 reasonable doubt; namely, that the charged conspiracy resulted
12 in the death of a person named in the respective count of the
13 indictment. The government has alleged in these counts that
14 each of the charged conspiracies resulted in the death of four
15 people: Krystle Marie Campbell, Officer Sean Collier, Lingzi
16 Lu, and Martin Richard.

17 For you to find that a charged conspiracy resulted in
18 death, the government must prove beyond a reasonable doubt that
19 the charged conspiracy resulted in the death of at least one of
20 those people. You should consider each alleged death
21 separately, and your determination of which death, if any,
22 resulted from the charged conspiracy must be a unanimous one.

23 A death results from a charged crime if the death
24 would not have occurred if the crime had not been committed.

25 In addition to the three counts in the indictment that

1 charged the defendant with conspiracy, there are 27 counts that
2 charged the defendant with committing substantive offenses. In
3 all of those substantive counts, the defendant is charged both
4 as a principal and as an aider and abetter. And I've
5 instructed you as to what must be proved to prove him guilty as
6 an aider and abetter.

7 Additionally, a person may be found guilty of a
8 substantive crime by his having been a coconspirator with
9 another person who in furtherance of the conspiracy commits a
10 crime that is within the scope of the conspiracy; in other
11 words, a defendant who is found to have knowingly joined in a
12 conspiracy may be held responsible for criminal acts committed
13 by his fellow conspirators.

14 Any member of a conspiracy who commits a crime during
15 the existence or life of the conspiracy in order to further or
16 advance the objectives of the conspiracy is, in effect, acting
17 as an agent for all the other members of the conspiracy, doing
18 what they all expect to be done to achieve the results they've
19 agreed to pursue. That person's illegal activity may therefore
20 be attributed to the other coconspirators even if they have not
21 directly participated in their fellow conspirators' illegal
22 act.

23 You may find the defendant guilty of the substantive
24 crime as charged in the indictment, even if he did not
25 personally commit or participate in the actual commission of

1 the crime, if you are convinced that the crime was committed by
2 a coconspirator of the defendant acting in furtherance of the
3 conspiracy. For instance, if you find beyond a reasonable
4 doubt that the defendant was guilty as a member of the
5 conspiracy charged in Count One, which is conspiracy to use a
6 weapon of mass destruction resulting in death, then you may,
7 although you're certainly not required to, find the defendant
8 guilty of the substantive crime that was committed by a
9 coconspirator who was working to accomplish the objective of
10 the conspiracy.

11 To find the defendant guilty under this theory, you
12 must be convinced of five things beyond a reasonable doubt:
13 First, that the defendant was guilty of being a conspirator in
14 the unlawful conspiracy; second, that another member of the
15 conspiracy committed the substantive crime, say, use of a
16 weapon of mass destruction resulting in death as charged in the
17 particular count; third, that that coconspirator who committed
18 the crime did so in furtherance of the work of the conspiracy;
19 fourth, that the defendant was at that time still an active
20 member of the conspiracy and had not withdrawn from
21 participating in it.

22 Sometimes people may join in a conspiracy and then
23 later leave or abandon the agreement. If that should happen,
24 the person is no longer responsible for what is done thereafter
25 by coconspirators.

1 And finally, the final element is that the defendant
2 could reasonably have foreseen that his coconspirator would
3 have committed the substantive crime in furtherance of the
4 conspiracy.

5 In sum, and the conditions are that the defendant has
6 to be guilty of the conspiracy with somebody else; somebody
7 else in the conspiracy committed the crime; the crime was
8 committed in furtherance of the joint agreement to violate the
9 law; that the defendant was then still an active participant in
10 the conspiracy; and last, that the defendant could reasonably
11 have foreseen that one of his coconspirators would have done
12 what was done to commit the crime.

13 If you find all of those things beyond a reasonable
14 doubt, then you may find one conspirator guilty both of the
15 conspiracy under the relevant counts and of the substantive
16 offenses committed by the coconspirator.

17 I will now explain the elements for each of the
18 substantive counts. Each count of the indictment charges the
19 defendant with having committed a separate offense. Each count
20 and the evidence relating to it should be considered
21 separately, and a separate verdict will be returned as to each
22 count. Your verdict of guilty or not guilty of an offense
23 charged in one count should not control your decision on any
24 other count.

25 I'm going to group the counts by the nature of the

1 charge that is made because many of them repeat the same
2 statutory basis for asserting the fact of the crime.

3 Counts Two, Four, Twenty-Three, Twenty-Five,
4 Twenty-Seven and Twenty-Nine charge the defendant with the
5 crime of using a weapon of mass destruction. As you've heard,
6 the defendant is charged in Count One with conspiracy to use a
7 weapon of mass destruction. He's also charged in six counts
8 with using a weapon of mass destruction and/or aiding and
9 abetting Tamerlan Tsarnaev's use of a weapon of mass
10 destruction. So these are the substantive offenses related to
11 the conspiracy that is charged in Count One.

12 To find the defendant guilty of the use of a weapon of
13 mass destruction either by direct commission or as an aider and
14 abetter, you must unanimously find the government has proved
15 each of the following three elements beyond a reasonable doubt:
16 First, the defendant knowingly used a weapon of mass
17 destruction; second, that it was knowingly used against a
18 person or against real or personal property within the United
19 States; and, third, that such property was used in interstate
20 or foreign commerce or in an activity that affects interstate
21 or foreign commerce; or, alternatively, that the offense or the
22 results of the offense affected interstate or foreign commerce.

23 So you'll see from that third element there's a
24 jurisdictional element, as I previously described it, and it is
25 pled in the alternative. There are two ways of proving the

1 third element, which is that property was used in interstate or
2 foreign commerce or in an activity that affected it, or that
3 the offense or its results affected interstate or foreign
4 commerce. If you choose an alternative, you must be unanimous
5 as to which you choose.

6 Some of the defined terms: A "weapon of mass
7 destruction" for these purposes means a destructive device
8 which is defined by statute as any explosive bomb. "Knowingly"
9 in this context, as in others, means that the act was done
10 voluntarily and intentionally and not because of a mistake or
11 an accident. "Interstate commerce" means commerce between any
12 point in a state and any point outside that state. It is only
13 necessary the government prove beyond a reasonable doubt that
14 the crime had some minimal effect on interstate commerce. It
15 is not necessary to find the defendant knew or intended that
16 his actions would affect interstate commerce.

17 Each of the six counts that charge the defendant with
18 the use of a weapon of mass destruction relates to a different
19 alleged destructive device.

20 Count Two charges the defendant used a weapon of mass
21 destruction and/or aided and abetted the use of a weapon of
22 mass destruction in front of Marathon Sports on April 15, 2013.
23 The indictment and verdict form both refer to the bomb alleged
24 as Pressure Cooker Bomb No. 1.

25 Count Two alleges an additional element the government

1 must prove beyond a reasonable doubt; namely, the offense
2 resulted in the death of Krystle Marie Campbell.

3 Count Four charges the defendant used and/or aided and
4 abetted the use of a weapon of mass destruction in front of the
5 Forum restaurant on April 15, 2013. The indictment and verdict
6 form refer to the bomb alleged as Pressure Cooker Bomb No. 2.

7 Count Four also alleges an additional element the
8 government must prove beyond a reasonable doubt; namely, that
9 the offense resulted in the death of Lingzi Lu and/or Martin
10 Richard.

11 For you to find the defendant guilty of the additional
12 element, you must unanimously find beyond a reasonable doubt
13 that the offense charged in Count Four resulted in the death of
14 at least one of these two people, and you should consider each
15 separately. Your determination of which death, if either,
16 resulted from the offense must be unanimous.

17 Count Twenty-Three charges the defendant with use of a
18 weapon of mass destruction and/or aiding and abetting the use
19 of a weapon of mass destruction that is alleged to have
20 exploded on Laurel Street on April 19th, 2013. The indictment
21 and verdict form refer to the bomb alleged as Pressure Cooker
22 Bomb No. 3.

23 Count Twenty-Five charges that the defendant used a
24 weapon of mass destruction and/or aided and abetted the use of
25 a weapon of mass destruction that is alleged to have exploded

1 on Laurel Street on April 19th, 2013. The indictment and
2 verdict form refer to this bomb alleged as Pipe Bomb No. 1.

3 Count Twenty-Seven charges the defendant used a weapon
4 of mass destruction and/or aided and abetted the use of a
5 weapon of mass destruction that is alleged to have exploded on
6 Laurel Street on April 19, 2013. The indictment and verdict
7 form refer to the bomb alleged as Pipe Bomb No. 2.

8 Count Twenty-Nine alleges the defendant used a weapon
9 of mass destruction and/or aided and abetted the use of a
10 weapon of mass destruction on Laurel Street on April 19, 2013,
11 that did not explode. The indictment and verdict form refer to
12 the bomb alleged as Pipe Bomb No. 3.

13 Counts 3, 5, 24, 26, 28 and 30 charge the defendant
14 with the crime of using or carrying a firearm during and in
15 relation to a crime of violence. In addition to being charged
16 with six counts of using a weapon of mass destruction as I've
17 just summarized, the defendant is charged with six
18 corresponding counts of using and carrying a firearm during and
19 in relation to that crime of violence. I will refer to these
20 as the "use and carry counts."

21 The use and carry counts separately charge that the
22 defendant used and carried a bomb, a pistol or both during and
23 in relation to each charged offense of the use of a weapon of
24 mass destruction.

25 Although the use and carry charges and the

1 corresponding use of a weapon of mass destruction charges
2 involve some overlapping conduct, under the law they are two
3 different crimes.

4 To find the defendant guilty as a principal of a count
5 charging that he used or carried a firearm during and in
6 relation to a crime of violence, you must unanimously find the
7 government has proved the following two elements beyond a
8 reasonable doubt: First, the defendant committed the
9 underlying crime of violence specified in the count that you're
10 considering; and, second, that the defendant knowingly used or
11 carried a firearm -- the firearm specified in the particular
12 count during and in relation to that underlying crime.

13 To find the defendant guilty of aiding and abetting
14 the use and carrying of a firearm during and in relation to the
15 crime of violence, you must unanimously find the government has
16 proved the following four elements beyond a reasonable doubt:
17 First, another person committed the underlying crime of
18 violence specified in the count you're considering; that the
19 person knowingly used or carried a firearm during and in
20 relation to the commission of that underlying crime; third, the
21 defendant facilitated either the use of the firearm or the
22 commission of the underlying crime; and, fourth, that the
23 defendant did so with the advance knowledge that the other
24 person would commit the underlying crime and would use or carry
25 a firearm during and in relation to it.

1 Again, to do something knowingly in this context means
2 to do it voluntarily and intentionally and not because of
3 mistake or accident.

4 A "firearm" in this context means any weapon which
5 will or is designed to expel a projectile by the action of an
6 explosive. A pellet or BB gun is not a firearm under the
7 relevant statute. A firearm includes a destructive device
8 which in turn means any explosive bomb. To use a firearm means
9 to employ the firearm actively, such as to brandish, display,
10 strike with, fire or attempt to fire, or detonate or attempt to
11 detonate. To carry a firearm means to move or transport the
12 firearm on one's person or in a vehicle or a container. A
13 firearm need not be immediately accessible.

14 The words "during" and "in relation to" are to be
15 given their ordinary and usual meaning. At a minimum, it means
16 the firearm must have had some purpose or effect with respect
17 to the underlying crime of violence. If a firearm is present
18 simply as a result of coincidence or accident, it cannot be
19 said that it was used or carried in relation to the underlying
20 crime of violence. A firearm must have facilitated or have had
21 the potential to facilitate the underlying offense.

22 To have advance knowledge that another person will use
23 or carry a firearm during and in relation to the crime of
24 violence means knowledge at a time when the individual could
25 have attempted to alter the plan or withdrawn from the

1 enterprise. Knowledge of the firearm may, but does not have
2 to, exist before the underlying crime commences. It is
3 sufficient if the knowledge is gained in the midst of the
4 underlying crime as long as the individual continues to
5 participate in the crime and has a realistic opportunity to
6 withdraw after acquiring the necessary knowledge.

7 You may but are not required to infer that an
8 individual had sufficient advance knowledge if you find the
9 individual continued his participation in the crime after
10 learning of the other person's possession of a firearm.

11 Most of the use and carry counts include additional
12 elements as to which the government bears the burden of proof
13 beyond a reasonable doubt. For example, some counts charge
14 that the firearm was brandished or that it was discharged or
15 that it was a destructive device or that the defendant caused
16 and/or aided another person in causing someone's death through
17 the use of the firearm, and the killing was a murder. So I'll
18 define some of those terms for you.

19 To brandish a firearm means to display all or part of
20 the firearm or otherwise to make the presence of the firearm
21 known to another person in order to intimidate that person
22 regardless of whether the firearm was directly visible to the
23 person. A destructive device, as I've told you, is any
24 explosive bomb.

25 "Murder" in this context is the unlawful killing of a

1 human being with malice aforethought. "Malice aforethought"
2 means an intent at the time of the killing willfully to take
3 the life of a human being or an intent willfully to act in a
4 callous and wanton disregard of the consequences to human life.
5 Malice aforethought does not necessarily imply ill will, spite
6 or a hatred toward the individual killed.

7 In determining whether a victim was unlawfully killed
8 with malice aforethought, you should consider all the evidence
9 concerning the facts and circumstances preceding, surrounding
10 and following the killing which may shed light on the question
11 of intent.

12 A willful, deliberate, malicious and premeditated
13 killing is a murder. A killing committed in the perpetration
14 of or an attempt to perpetrate any arson, robbery or other
15 murder is a murder. A killing perpetrated from premeditated
16 design unlawfully and maliciously to affect the death of any
17 human being other than the person who is killed is also a
18 murder. Premeditation contemplates a temporal dimension which
19 need only be an appreciable amount of time. This may vary from
20 case to case. The key element is the fact of deliberation of
21 second thought.

22 If in accordance with these instructions you find the
23 defendant guilty of using or carrying a firearm during and in
24 relation to a particular crime of violence or of aiding and
25 abetting another to do so, you may also find the defendant also

1 aided and abetted that other person in causing someone's death
2 through the use of the firearm even if the defendant did not
3 personally use the firearm or encourage the killing.

4 To find this, you must unanimously find beyond a
5 reasonable doubt the defendant was a willing participant in the
6 underlying crime of violence, the defendant intended the
7 killing take place, and that a co-participant caused the
8 victim's death through the use of a firearm.

9 You may also find the defendant aided and abetted
10 another in causing someone's death through the use of a firearm
11 if you unanimously find beyond a reasonable doubt that, A, the
12 defendant was a willing participant in the underlying crime,
13 the underlying crime of violence was an arson, robbery or
14 murder, and a co-participant caused the victim's death through
15 the use of a firearm.

16 Count Three charges the defendant knowingly used or
17 carried a firearm during and in relation to the crime of
18 violence that is charged in Count Two. You'll see that these
19 several use and carry counts all relate to one of the
20 substantive counts of the use of a weapon of mass destruction,
21 as I've told you. So you'll see them paired: Three goes with
22 two, Five with Four and so on.

23 So as to Count Three, the indictment and verdict form
24 identify the firearm for the use counts as Pressure Cooker Bomb
25 No. 1. The crime charged in Count Two, use of a weapon of mass

1 destruction, qualifies as a crime of violence.

2 In Count Three, the government also alleges additional
3 elements that must be proved beyond a reasonable doubt: that
4 the alleged firearm was discharged, that the alleged firearm
5 was a destructive device, and that the defendant in the course
6 of committing the offense charged in Count Three caused the
7 death of Krystle Marie Campbell through the use of the firearm
8 and the killing was a murder, or aided and abetted another in
9 causing the death of Krystle Marie Campbell through the use of
10 the firearm and the killing was a murder.

11 Count Five charges the defendant knowingly used or
12 carried a firearm during and in relation to the crime charged
13 in Count Four and/or aided and abetted another in doing so.

14 The indictment and verdict form identify the firearm
15 for these counts as Pressure Cooker Bomb No. 2. The crime
16 charged in Count Four qualifies as a crime of violence.

17 In Count Five, the government alleges three additional
18 elements that it must prove beyond a reasonable doubt: That
19 the alleged firearm was discharged, that the alleged firearm
20 was a destructive device, and that the defendant in the course
21 of committing the offense charged in Count Five caused the
22 death of Lingzi Lu and/or Martin Richard through the use of the
23 firearm and the killing was a murder, and/or aided and abetted
24 another in causing the death of Lingzi Lu and/or Martin Richard
25 through the use of the firearm and the killing was a murder.

1 Your finding as to which death, if either, was caused through
2 the use of the firearm must be unanimous.

3 Count Twenty-Four charges the defendant knowingly used
4 or carried a firearm during and in relation to the crime
5 charged in Count Twenty-Three and/or aided and abetted another
6 in doing so. The crime charged in Count Twenty-Three qualifies
7 as a crime of violence.

8 The indictment alleges that two firearms were used
9 and/or carried during and in relation to the offense charged in
10 Count Twenty-Three. They're identified in the indictment and
11 the verdict form as Pressure Cooker Bomb No. 3, and a Ruger P95
12 9mm semiautomatic handgun. To find the defendant guilty of
13 this use and carry charge, you must unanimously find beyond a
14 reasonable doubt that the defendant used or carried at least
15 one of the two alleged firearms during and in relation to the
16 underlying crime of violence and/or aided and abetted another
17 in doing so. You must be unanimous as to which if either of
18 the two alleged firearms the defendant used or carried during
19 and in relation to the underlying offense.

20 If you're unanimously convinced beyond a reasonable
21 doubt that Pressure Cooker Bomb No. 3 is a firearm and that the
22 defendant used or carried it during and in relation to the
23 crime charged in Count Twenty-Three, and/or aided and abetted
24 another in doing so, you will then determine whether the
25 government has proved either of the following two additional

1 elements beyond a reasonable doubt: that the alleged firearm
2 was discharged or that the alleged firearm was a destructive
3 device.

4 If you unanimously find beyond a reasonable doubt that
5 the Ruger P95 9mm semiautomatic handgun is a firearm, as I've
6 defined the term for you, and the defendant used or carried it
7 during and in relation to the crime charged in Count
8 Twenty-Three, and/or aided and abetted another in doing so, you
9 will then determine whether the government has also proved the
10 following additional element beyond a reasonable doubt: that
11 the firearm was discharged.

12 Count Twenty-Six charges the defendant knowingly used
13 or carried a firearm during and in relation to the crime
14 charged in Count Twenty-Five and/or aided or abetted another in
15 doing so. The crime charged in Count Twenty-Five qualifies as
16 a crime of violence.

17 The indictment alleges that two firearms were used and
18 carried during and in relation to the offense charged in Count
19 Twenty-Five. They're identified in the indictment on the
20 verdict form as Pipe Bomb No. 1 and a Ruger P95 9mm
21 semiautomatic handgun.

22 To find the defendant guilty, you must unanimously
23 find beyond a reasonable doubt that the defendant used or
24 carried at least one of these two alleged firearms during and
25 in relation to the underlying crime of violence and/or aided

1 and abetted another in doing so. You must be unanimous as to
2 which, if either, of the two alleged firearms the defendant
3 used or carried during and in relation to the underlying crime
4 of violence.

5 If you unanimously find beyond a reasonable doubt that
6 Pipe Bomb No. 1 is a firearm and the defendant used or carried
7 it during and in relation to the crime charged in Count
8 Twenty-Five, and/or aided and abetted another in doing so, you
9 will then determine whether the government has proved either of
10 the two following additional elements beyond a reasonable
11 doubt: that the alleged firearm was discharged and that the
12 alleged firearm was a destructive device.

13 If you unanimously conclude beyond a reasonable doubt
14 that the Ruger P95 9mm semiautomatic handgun is a firearm and
15 the defendant used or carried it during and in relation to the
16 crime charged in Count Twenty-Five, or aided and abetted
17 another to do so, you will then determine whether the
18 government has proved the following additional elements beyond
19 a reasonable doubt: that the alleged firearm was discharged.

20 Count Twenty-Eight charges the defendant knowingly
21 used or carried a firearm during and in relation to the crime
22 charged in Count Twenty-Seven and/or aided and abetted another
23 in doing so. The crime charged in Count Twenty-Seven qualifies
24 as a crime of violence. The indictment alleges that two
25 firearms were used and carried during and in relation to the

1 offense charged in Count Twenty-Seven. They're identified in
2 the indictment and the verdict form as Pipe Bomb No. 2 and a
3 Ruger P95 9mm semiautomatic handgun.

4 To find the defendant guilty, you must unanimously
5 find beyond a reasonable doubt that the defendant used or
6 carried at least one of these two alleged firearms during and
7 in relation to the underlying crime of violence and/or aided
8 and abetted another in doing so. You must be unanimous as to
9 which, if either, of the two alleged firearms the defendant
10 used or carried during and in relation to the underlying crime
11 of violence.

12 If you unanimously find beyond a reasonable doubt that
13 Pipe Bomb No. 2 is a firearm and the defendant used or carried
14 it during and in relation to the crime charged in Count
15 Twenty-Seven, or aided and abetted another in doing so, you'll
16 then determine whether the government has also proved either of
17 the following two elements beyond a reasonable doubt: that the
18 alleged firearm was discharged and that the alleged firearm was
19 a destructive device.

20 If you unanimously find beyond a reasonable doubt that
21 the Ruger P95 9mm semiautomatic handgun is a firearm and the
22 defendant used or carried it during and in relation to the
23 crime charged in Count Twenty-Seven, and/or aided and abetted
24 another in doing so, you will then determine whether the
25 government has also proved the following additional element

1 beyond a reasonable doubt: that the alleged firearm was
2 discharged.

3 Count Thirty charges the defendant knowingly used or
4 carried a firearm during and in relation to the crime charged
5 in Count Twenty-Nine or aided and abetted another in doing so.
6 The crime charged in Count Twenty-Nine qualifies as a crime of
7 violence. The indictment alleges that two firearms were used
8 or carried during and in relation to the offense charged in
9 Count Twenty-Nine. They're identified in the indictment and
10 the verdict form as Pipe Bomb No. 3 and a Ruger P95 9mm
11 semiautomatic handgun.

12 To find the defendant guilty of this count, you must
13 unanimously find beyond a reasonable doubt that the defendant
14 used or carried at least one of these two alleged firearms
15 during and in relation to the underlying crime of violence
16 and/or aided and abetted another to do so. You must be
17 unanimous as to which, if either, of the two alleged firearms
18 the defendant used or carried during and in relation to the
19 underlying crime of violence.

20 If you unanimously find beyond a reasonable doubt that
21 the Pipe Bomb No. 3 is a firearm and the defendant used or
22 carried it during and in relation to the underlying crime
23 charged in Count Twenty-Nine, and/or aided and abetted another
24 in doing so, you will then determine whether the government has
25 also proved either of the following two additional elements

1 beyond a reasonable doubt: that the alleged firearm was
2 brandished intentionally and that the alleged firearm was a
3 destructive device.

4 If you unanimously find beyond a reasonable doubt that
5 the Ruger P95 9mm semiautomatic handgun is a firearm and the
6 defendant used or carried it during and in relation to the
7 crime charged in Count Twenty-Nine and/or aided and abetted
8 another in doing so, you will determine whether the government
9 has also proved the following additional element beyond a
10 reasonable doubt: that the alleged firearm was discharged.

11 Counts Seven and Nine charge the defendant with the
12 crime of bombing a place of public use. You'll recall that I
13 have instructed you that Count Six charges the defendant with
14 conspiracy to bomb a place of public use. Counts Seven and
15 Nine charge the defendant with the substantive crime of bombing
16 a place of public use and/or aiding and abetting another to do
17 so.

18 To find the defendant guilty of the crime of bombing a
19 place of public use, you must find that the government has
20 proved each of the following four elements beyond a reasonable
21 doubt: First, the defendant knowingly delivered, placed,
22 discharged or detonated an explosive in, into or against a
23 place of public use; second, that the defendant did so
24 intending to cause death or serious bodily injury, or
25 alternatively, that the defendant did so with the intent to

1 cause extensive destruction of such place when such destruction
2 resulted -- where such destruction results in or is likely to
3 result in major economic loss.

4 You need not find the government has proved both of
5 these types of intent, but you must unanimously find the
6 government has proved at least one of them beyond a reasonable
7 doubt. The third element is that the offense took place in the
8 United States, and the fourth element is that the offense was
9 committed in an attempt to compel the United States to do or to
10 abstain from doing any act.

11 A "place of public use" means those parts of any
12 building, land, street or other location that are accessible or
13 open to members of the public whether continuously,
14 periodically or occasionally, and encompasses any commercial,
15 business, cultural, historical, entertainment, recreational or
16 similar place that is so accessible and open to the public.

17 "Serious bodily injury" means bodily injury which
18 involves: A, a substantial risk of death; B, extreme physical
19 pain; C, protracted and obvious disfigurement; or, D,
20 protracted loss or impairment of the function of a bodily
21 member, organ or mental faculty.

22 For these purposes, an explosive means gunpowders,
23 powders used for blasting, blasting materials, fuses other than
24 electric circuit breakers, detonators and any chemical
25 compounds, chemical mixture or device that contains any

1 oxidizing or combustible units or other ingredients in such
2 proportions, quantities or packing that ignition by fire or by
3 detonation of the compound, mixture or device or any part
4 thereof may cause an explosion in so far that it is designed or
5 has the capability to cause death, serious bodily injury or
6 substantial material damage.

7 Count Seven charges the defendant placed a bomb in
8 front of Marathon Sports on Boylston Street in Boston causing
9 extensive destruction to Marathon Sports and other places of
10 public use and/or aided and abetted another in doing so. The
11 indictment and verdict form refer to this alleged explosive as
12 Pressure Cooker Bomb No. 1. In Count Seven, the government
13 alleges an additional element that it must prove beyond a
14 reasonable doubt: that the offense resulted in the death of
15 Krystle Marie Campbell.

16 Count Nine charges the defendant bombed a place of
17 public use by placing a bomb in front of the Forum restaurant
18 causing extensive destruction to the Forum restaurant and other
19 places of public use and/or aided and abetted another in doing
20 so. The indictment and verdict form refer to this alleged
21 explosive as Pressure Cooker Bomb No. 2.

22 In Count Nine, the government alleges an additional
23 element that it must prove beyond a reasonable doubt; namely,
24 that the offense resulted in the death of Lingzi Lu and/or
25 Martin Richard. For you to find the defendant guilty of this

1 additional element, you must unanimously find beyond a
2 reasonable doubt that he committed the offense -- that the
3 offense resulted in the death of at least one of these two
4 people, and you should consider each separately. And your
5 determination of which death, if either, resulted must be
6 unanimous.

7 Counts Eight and Ten charge the defendant with the
8 crime of using and carrying a firearm during and in relation to
9 a crime of violence. We went through this with respect to the
10 crime of violence of use of a weapon of mass destruction. Each
11 of those counts was paired with a count of using and carrying a
12 firearm during and in relation to the crime of violence. This
13 is similar with respect to the crimes charged in Counts Seven
14 and Nine, is the bombing of a public place. Counts Eight and
15 Ten allege use of and carrying a firearm during and in relation
16 to those crimes.

17 So Count Eight charges the defendant knowingly used
18 and/or carried a firearm during and in relation to the crime
19 charged in Count Seven and/or aided and abetted another in
20 doing so. The indictment and verdict form identify the bomb as
21 Pressure Cooker Bomb No. 1. The crime charged in Count Seven
22 qualifies as a crime of violence.

23 In Count Eight, the government also alleges three
24 additional elements, each of which it must prove beyond a
25 reasonable doubt: that the alleged firearm was discharged,

1 that the alleged firearm was a destructive device, and that the
2 defendant in the course of committing the offense charged in
3 Count Eight caused the death of Krystle Marie Campbell through
4 the use of the firearm and the killing was a murder, and/or
5 aided and abetted another in causing the killing of Krystle
6 Marie Campbell through the use of the firearm, and the killing
7 was a murder.

8 Count Ten charges the defendant knowingly used or
9 carried a firearm during and in relation to the crime charged
10 in Count Nine and/or aided and abetted another in doing so. The
11 indictment and verdict form identify this bomb as Pressure
12 Cooker Bomb No. 2. The crime charged in Count Nine is a crime
13 of violence.

14 In Count Ten, the government also alleges three
15 additional elements that it must prove beyond a reasonable
16 doubt: that the alleged firearm was discharged, that the
17 alleged firearm was a destructive device, and that the
18 defendant in the course of committing the offense charged in
19 Count Ten caused the death of Lingzi Lu and/or Martin Richard
20 through the use of the firearm and that the killing was a
21 murder, and/or aided and abetted another in causing the death
22 of Lingzi Lu and/or Martin Richard through the use of the
23 firearm and the killing was a murder.

24 For you to find the defendant guilty of the last
25 element, you must unanimously find beyond a reasonable doubt

1 that the charged offense resulted in the death of at least one
2 of the two people identified. You should consider each
3 separately, and your determination of which death, if either,
4 resulted from the offense must be an unanimous one.

5 Counts Twelve and Fourteen charge the defendant with
6 malicious destruction of property. I have already instructed
7 you that Count Eleven charges the defendant with the conspiracy
8 to maliciously destroy property. Counts Twelve and Fourteen
9 charge the defendant with the substantive offense of malicious
10 destruction of property.

11 To find the defendant guilty of the malicious
12 destruction of property, you must find the government has
13 proved each of the following elements beyond a reasonable
14 doubt: First, the defendant damaged or destroyed or attempted
15 to damage or destroy by means of fire or an explosive any
16 building, vehicle or other real or personal property; second,
17 that the defendant did so maliciously; third, he did so by
18 means of a fire or explosion; and, fourth, that the building,
19 vehicle or other real or personal property was used in
20 interstate or foreign commerce or in any activity affecting
21 interstate or foreign commerce.

22 Let me define some of those terms. I told you what
23 "explosive" means. To act maliciously means to act
24 intentionally or with deliberate disregard of the likelihood
25 that damage or injury will result. Use in interstate or

1 foreign commerce or in any activity affecting interstate or
2 foreign commerce means current active employment for commercial
3 purposes, not merely a passive passing or past connection to
4 commerce. The property's function must affect interstate
5 commerce.

6 Count Twelve charges the defendant placed an explosive
7 bomb in the vicinity of Marathon Sports on Boylston Street in
8 Boston resulting in a premature end to the Boston Marathon and
9 damage to Marathon Sports and other business property, and/or
10 aided and abetted another in doing so. The indictment and
11 verdict form refer to this alleged explosive as Pressure Cooker
12 Bomb No. 1.

13 In Count Twelve, the government alleges two other
14 elements it must prove beyond a reasonable doubt: that the
15 defendant as a result of his conduct directly or proximally
16 caused personal injury or created a substantial risk of injury
17 to any person, and/or aided and abetted another in doing so;
18 and, second, that the defendant as a result of his conduct
19 directly or proximally caused the death of Krystle Marie
20 Campbell and/or purposely aided and abetted another in doing
21 so.

22 Count Fourteen charges the defendant placed a bomb in
23 the vicinity of the Forum restaurant on Boylston Street in
24 Boston resulting in a premature end to the Boston Marathon and
25 damage to the Forum restaurant and other business property,

1 and/or aided and abetted another in doing so. The indictment
2 and verdict form refer to this bomb as Pressure Cooker Bomb
3 No. 2.

4 In Count Fourteen, the government also alleges two
5 other elements it must prove beyond a reasonable doubt: that
6 the defendant as a result of his conduct directly or proximally
7 caused personal injury or created a substantial risk of injury
8 to any person and/or aided and abetted another in doing so, and
9 the defendant as a result of his conduct directly or proximally
10 caused the death of any person.

11 For you to find the defendant guilty of this
12 additional element, you must find unanimously beyond a
13 reasonable doubt that the defendant, through his conduct,
14 directly or proximally caused the death of Lingzi Lu and/or
15 Martin Richard. You should consider each separately, and your
16 decision as to which, if either, death resulted from the
17 defendant's conduct must be a unanimous one.

18 Counts Thirteen and Fifteen charge the defendant with
19 using and carrying a firearm during and in relation to the
20 crime of violence alleged in Counts Twelve and Fourteen. Count
21 Thirteen charges the defendant knowingly used or carried a
22 firearm during and in relation to the crime charged in Count
23 Twelve and/or aided and abetted another in doing so. The
24 indictment and verdict form identify this bomb as Pressure
25 Cooker Bomb No. 1. The crime charged in Count Twelve is a

1 crime of violence.

2 In Count Thirteen, the government also alleges three
3 additional elements it must prove beyond a reasonable doubt:
4 that the alleged firearm was discharged, that the alleged
5 firearm was a destructive device, and that the defendant in the
6 course of committing the offense charged in Count Thirteen
7 caused the death of Krystle Marie Campbell through the use of
8 the firearm, and the killing was a murder, and/or aided and
9 abetted another in causing the death of Krystle Marie Campbell
10 through the use of the firearm, and the killing was a murder.

11 Count Fifteen charges the defendant knowingly used or
12 carried a firearm during and in relation to the crime of
13 violence charged in Count Fourteen, and/or aided and abetted
14 another in doing so. The indictment and verdict form identify
15 this bomb as Pressure Cooker Bomb No. 2. The crime charged in
16 Count Fourteen is a crime of violence.

17 In Count Fifteen, the government also alleges three
18 additional elements it must prove beyond a reasonable doubt:
19 that the alleged firearm was discharged, that the alleged
20 firearm was a destructive device, and that the defendant in the
21 course of committing the offense charged in Count Fifteen
22 caused the death of Lingzi Lu and/or Martin Richard through the
23 use of the firearm, and the killing was a murder, and/or aided
24 and abetted another in causing the death of Lingzi Lu and/or
25 Martin Richard through use of the firearm, and the killing was

1 a murder.

2 For you to find the defendant guilty of this
3 additional element, you must unanimously find beyond a
4 reasonable doubt that the defendant through his conduct
5 directly or proximally caused the death of Lingzi Lu and/or
6 Martin Richard. You should consider each separately, and your
7 determination as to which, if either, was caused by -- either
8 death was caused by the defendant, your decision must be a
9 unanimous one.

10 Counts Sixteen, Seventeen and Eighteen charge the
11 defendant with using and carrying a firearm during and in
12 relation to a crime of violence. Count Sixteen charges the
13 defendant knowingly used or carried a firearm identified as a
14 Ruger P95 9mm semiautomatic handgun during and in relation to
15 the crime of conspiracy to use a weapon of mass destruction
16 that is charged in Count One, and/or aided and abetted another
17 in doing so. The crime charged in Count One qualifies as a
18 crime of violence.

19 In Count Sixteen, the government also alleges two
20 additional elements, each of which it must prove beyond a
21 reasonable doubt: that the alleged firearm was discharged, and
22 that the defendant caused the death of Officer Sean Collier
23 through the use of the firearm, and the killing was murder,
24 and/or that he aided and abetted another in causing the death
25 of Officer Sean Collier through the use of the firearm, and the

1 killing was a murder.

2 Count 17 likewise charges the defendant knowingly used
3 or carried a firearm identified as a Ruger P95 9mm
4 semiautomatic handgun during and in relation to the crime of
5 conspiracy to bomb a place of public use as charged in Count
6 Six, and/or aided or abetted another in doing so. The crime
7 charged in Count Six qualifies as a crime of violence.

8 Like Count Sixteen, Count Seventeen charges two
9 additional elements the government must prove beyond a
10 reasonable doubt: that the alleged firearm was discharged, and
11 that the defendant caused the death of Officer Sean Collier
12 through the use of the firearm, and the killing was a murder,
13 and/or that he aided and abetted another in causing the death
14 of Officer Sean Collier through the use of the firearm, and the
15 killing was a murder.

16 Similarly, Count Eighteen charges the defendant
17 knowingly used or carried a firearm identified as a Ruger P95
18 9mm semiautomatic handgun during and in relation to the crime
19 of conspiracy to maliciously destroy property as alleged in
20 Count Eleven, and/or aided and abetted another in doing so.
21 The crime charged in Count Eleven is a crime of violence.

22 Like Counts Sixteen and Seventeen, Count Eighteen
23 charges the additional elements that the government must prove
24 beyond a reasonable doubt: that the alleged firearm was
25 discharged and that the defendant caused the death of Officer

1 Sean Collier through the use of the firearm and the killing was
2 a murder, and/or that he aided and abetted another in causing
3 the death of Officer Sean Collier through the use of the
4 firearm and the killing was a murder.

5 My instructions I've already given regarding the
6 elements of the crime of using and carrying a firearm during
7 and in relation to a crime of violence apply to these Counts
8 Sixteen, Seventeen and Eighteen, as do my instructions
9 regarding aiding and abetting. The meaning of the word
10 "discharge" and the requirements for finding that the firearm
11 caused the death of a person and the killing was a murder, all
12 of those instructions apply to Counts Sixteen, Seventeen and
13 Eighteen.

14 And I remind you, of course, that to find the
15 defendant guilty of an offense, you must be unanimously
16 convinced the government has proved each and every element of
17 the offense beyond a reasonable doubt.

18 As I've previously described, there is another method
19 by which you may evaluate whether the defendant is guilty under
20 Counts Sixteen, Seventeen or Eighteen. If you find the
21 defendant is guilty of one or more of the underlying
22 conspiracies that are referred to in Count Sixteen, Seventeen
23 and Eighteen, that is, the conspiracies alleged in Counts One,
24 Six and Eleven, if you find the defendant guilty of those
25 conspiracy charges, you may, but of course are not required to,

1 find him guilty of using and carrying a firearm during and in
2 relation to the crime of conspiracy of which you found him
3 guilty provided you find beyond a reasonable doubt the
4 following elements: First, the defendant was guilty of being a
5 conspirator in the underlying unlawful conspiracy; second, that
6 his coconspirator used or carried the firearm during and in
7 relation to the conspiracy; third, the coconspirator did so in
8 furtherance of the conspiracy; and, fourth, that the defendant
9 was at the time still an active member of the conspiracy and
10 had not withdrawn from it; and, fifth and finally, that the
11 defendant could have reasonably foreseen that the coconspirator
12 might use or carry the firearm during and in relation to the
13 conspiracy.

14 If you find all five of those elements to exist beyond
15 a reasonable doubt, especially the fifth which is important,
16 the defendant's state of mind, then you may find the defendant
17 guilty of using and carrying a firearm during and in relation
18 to the conspiracy even if he did not personally commit the acts
19 constituting the crime of using and carrying a firearm during
20 and in relation to the underlying conspiracy. However, if you
21 are not satisfied of the existence of any one of the five
22 elements that I've outlined, then you may not find the
23 defendant guilty under this theory.

24 The same holds true for the additional element that is
25 charged in Counts Sixteen, Seventeen and Eighteen, namely, that

1 the defendant through the use of the firearm caused the death
2 of Officer Sean Collier; that is, you may, but are not required
3 to, find the defendant guilty of that element if you
4 unanimously conclude beyond a reasonable doubt that the
5 defendant joined the underlying conspiracy charged in each
6 count, that a coconspirator used and carried the firearm during
7 and in relation to the underlying conspiracy, that the firearm
8 was used to cause the murder of Officer Collier, the killing
9 was in furtherance of the conspiracy, and the defendant was a
10 member of the conspiracy at the time the killing occurred, and
11 the killing was reasonably foreseeable to the defendant.

12 Count Nineteen charges the defendant with carjacking,
13 specifically alleges the defendant carjacked a Mercedes SUV
14 from Dun Meng and/or aided and abetted another in doing so.
15 For you to find the defendant guilty of carjacking, you must
16 unanimously conclude that the government has proved the
17 following four elements beyond a reasonable doubt: First, the
18 defendant took a motor vehicle from Dun Meng; second, the
19 defendant took the motor vehicle through the use of force,
20 violence or intimidation; third, the defendant intended to
21 cause death or serious bodily harm at the time he took the
22 motor vehicle; and fourth, that the motor vehicle was
23 transported, shipped or received in interstate or foreign
24 commerce.

25 A person who takes a motor vehicle from the person or

1 presence of another acts with the intent to cause death or
2 serious bodily harm if the person intends to seriously harm or
3 kill the driver, if necessary, to steal the car. You may
4 infer, although you are not required to do so, that a person
5 acted with such intent if he demanded the car at gunpoint or
6 used verbal threats. You may also infer, although you're not
7 required to do so, the person acted with such intent if he
8 willfully and knowingly participated in the initiation of the
9 carjacking knowing that another intended to demand the car at
10 gunpoint.

11 As to Count Nineteen, the government also alleges and
12 must prove beyond a reasonable doubt that the carjacking
13 resulted in the serious bodily injury to Officer Richard
14 Donohue. "Serious bodily injury" means bodily injury that
15 involves a substantial risk of death or extreme physical pain
16 or protracted and obvious disfigurement or protracted loss or
17 impairment of the function of a bodily member, organ or mental
18 faculty. Injury may be said to have resulted from a carjacking
19 even if it did not result from the taking of the car so long as
20 it was caused by the carjacker while he still retained the car.

21 Count Twenty charges the defendant with the crime of
22 using and carrying a firearm during and in relation to the
23 crime of violence that is charged in Count Nineteen, that is
24 carjacking. Specifically, Count Twenty charges the defendant
25 knowingly used or carried a firearm identified as a Ruger P95

1 9mm semiautomatic handgun during and in relation to the crime
2 of carjacking that is charged in Count Nineteen, and/or aided
3 and abetted another in doing so. The crime charged in Count
4 Nineteen qualifies as a crime of violence.

5 The instructions I previously gave you with respect to
6 using and carrying a firearm during and in relation to a crime
7 of violence apply with equal force to this count.

8 With respect to Count Twenty, the government seeks to
9 prove an additional element beyond a reasonable doubt, namely,
10 that the firearm was brandished. My previous instruction about
11 the definition of "brandished" applies here.

12 Count Twenty-One charges the defendant with robbery
13 affecting interstate commerce. Specifically, Count Twenty-One
14 charges the defendant committed a robbery affecting interstate
15 commerce by withdrawing \$800 from Dun Meng's bank account on
16 April 18, 2013, at an ATM in Watertown, and/or aided and
17 abetted another in doing so. To find the person guilty of this
18 charge, you must unanimously find beyond a reasonable doubt
19 that the government has proved the following elements: First,
20 that the defendant knowingly and willfully took property from
21 Dun Meng; second, that he did so by robbery; third, that the
22 robbery affected interstate commerce.

23 To act willfully in this context is to act voluntarily
24 and intelligently with the specific intent that the
25 underlying -- that the crime be committed, that is, with a bad

1 purpose either to disobey or disregard the law and not by
2 accident, ignorance or mistake.

3 Robbery in this context means unlawfully taking or
4 obtaining personal property from another against his or her
5 will by means of actual or threatened force or violence or fear
6 of injury to the person or property or to property in his
7 custody or possession.

8 It is only necessary the government prove beyond a
9 reasonable doubt that there is a realistic probability that the
10 acts committed by the defendant as charged in the indictment
11 had some minimal effect on interstate commerce. It is not
12 necessary for you to find the defendant knew or intended that
13 his actions would affect interstate commerce.

14 Count Twenty-Two charges the defendant with using and
15 carrying a firearm during and in relation to a crime of
16 violence, in this case, the crime of robbery affecting
17 interstate commerce that is charged in Count Twenty-One, or
18 aiding and abetting another in doing so. The crime charged in
19 Count Twenty-One, the robbery, is a crime of violence. I've
20 previously instructed you the elements of the crime of using
21 and carrying a firearm during and in relation to a crime of
22 violence, and those apply here as well.

23 With respect to Count Twenty-Two, the government seeks
24 to prove an additional element beyond a reasonable doubt;
25 namely, that the firearm was brandished. And I've previously

1 instructed you about brandishing.

2 Those are the elements of the offenses. And as I say,
3 you will have the instructions with you and you can go through
4 them again as necessary as you think about each of the counts
5 in the indictment. That concludes my opening part of my
6 instructions. I'll have more to say later.

7 We're now going to turn to the closing arguments, or
8 closing statements, by the lawyers. And as I say, when they're
9 finished we'll have some more to say to you about how to
10 deliberate on the evidence.

11 The order of presentation of the closing statements is
12 the government goes first, followed by the defendant. And if
13 the government wishes, it may have the opportunity for a brief
14 rebuttal. So we'll begin with the government's closing.

15 Mr. Chakravarty.

16 MR. CHAKRAVARTY: Just a moment to set up, your Honor?

17 THE COURT: For the convenience of the reporter, we're
18 going to take a five-minute break. Please, of course, no
19 discussion of any of the matters.

20 THE CLERK: All rise for the Court and jury. The
21 Court will take a five-minute break.

22 (The Court and jury exit the courtroom and there is a
23 recess in the proceedings at 11:15 a.m.)

24 THE CLERK: All rise for the Court and the jury.

25 (The Court and jury enter the courtroom at 11:31 a.m.)

1 THE CLERK: Be seated.

2 THE COURT: Mr. Chakravarty.

3 MR. CHAKRAVARTY: Thank you, your Honor.

4 The defendant brought terrorism to backyards and to
5 main streets. The defendant thought that his values were more
6 important than the people around him. He wanted to awake the
7 mujahidin, or the holy warriors, and so he chose Patriots' Day.
8 He chose marathon Monday. He chose a family day of
9 celebration. He chose a day when the eyes of the world would
10 be on Boston, a sporting event celebrating human achievement.
11 He chose a day where there would be civilians on the sidewalks.
12 And he and his brother targeted those civilians, men, women and
13 children, because he wanted to make a point. He wanted to
14 terrorize this country. He wanted to punish America for what
15 it was doing to his people.

16 So that's what he did. He and his brother killed two
17 young women that day. They killed a little boy. They maimed
18 and permanently disfigured dozens of people. At least 17
19 amputees. At least 240 were injured. And after they did it,
20 he coolly, not 20 minutes later, went to the Whole Foods to
21 make sure he got the half gallon of milk that he wanted. The
22 next day he went back down to college, joked with his friends,
23 got a workout in. He even went back to Twitter, and he decided
24 to tweet so that everybody knew what he was feeling.

25 The defendant and his brother did this together. He

1 planted one bomb, his brother planted the other. It was a
2 coordinated attack to maximize the terror. Because that was
3 the purpose. And after they did, they went back and they laid
4 low. But three days later, when their faces were all over the
5 news, they sprung back into action, and again in a coordinated
6 style, they went back and they said they needed to build more
7 bombs. They needed to continue with their campaign. But they
8 needed a gun. So they went to MIT and there they saw Officer
9 Sean Collier. They targeted him and they killed him. They
10 tried to get his gun. They couldn't.

11 Now that their car was captured on camera, now that
12 they couldn't get that extra gun, what did they decide to do?
13 They needed a new car. So they drove over the bridge from
14 Cambridge into Brighton, and there they found Dun Meng who was
15 on the side of the road. Dun Meng in his Mercedes SUV. And
16 Tamerlan approached from the passenger's side and brandishes
17 the gun and carjacked the vehicle.

18 Dun Meng didn't even know that the defendant was
19 following closely until they got to Watertown. And in
20 Watertown they transferred some things into the car. The
21 defendant gets into the car. What they didn't realize was that
22 the police would track down that Mercedes so fast. And so
23 where they had been planning to go to New York with all of
24 their bombs, all their guns, they were instead encountered by
25 the Watertown police. And when they did, they made their last

1 stand.

2 And in their last stand -- you heard about it and
3 you'll hear more about it today -- eventually Tamerlan had run
4 out of bullets and he went and charged at the police. He was
5 subdued. And then the defendant was all alone. And he had
6 choices to make: He could surrender; he could keep driving --
7 get back into the car and keep driving; he could do what his
8 brother did and charge at the police.

9 But he chose a different path altogether. He chose to
10 get back into the Mercedes, turn it around, use it as a weapon
11 and try to mow down the police officers who had apprehended his
12 brother. He hit his brother. He dragged him. He almost hit
13 Officer Colon. And then he made his escape.

14 A short while later, about half a mile down the road,
15 he abandoned the Mercedes and he was on foot. He was alone.
16 He was injured. He made his way down a hill looking for a
17 place for refuge. You heard that there were some blood marks
18 where he was trying to find some place to hide.

19 Eventually he found the winterized boat with a tarp on
20 it in Dave Henneberry's backyard. When he saw that, he found a
21 place for refuge. But before he climbed into that boat he took
22 his phones, he went behind the shed right next door, and he had
23 the presence of mind to smash his phones, including the phone
24 that he had coordinated the attacks with his brother with. The
25 phone that he had used to talk to his brother after the

1 attacks, he smashed that phone. He ditched it behind the shed
2 with his other phone and Dun Meng's bank card. And then
3 without the help of a ladder even he pulls himself up into the
4 boat that you all saw -- he pulls himself up into the boat and
5 he lies down and he thinks about what he did and what he was
6 going to do in that boat.

7 And ultimately, he did what terrorists do after they
8 commit terrorist acts: He wanted his actions to stand for more
9 than what people might think, so he wanted to tell the world
10 why he did what he did. He wanted to take credit. He wanted
11 to justify his acts. And in that boat, when the helicopters
12 were overhead, the sirens were blaring, there were police
13 canvassing, looking for him, he was all alone, and in his voice
14 he chose to write something to the American people.

15 "I'm jealous of my brother who has received the reward
16 of jannatul Firdaus (inshallah --" remember, that's the highest
17 levels of paradise. "-- God willing) before me. I do not
18 mourn because his soul is very much alive. God has a plan for
19 each person. Mine was to hide in his boat and shed some light
20 on our actions. I ask Allah to make me a shahied --" martyr
21 "-- inshallah, to allow me to return to him and be among all
22 the righteous people in the highest levels of heaven.

23 "He who Allah guides, no one can misguide. Allah
24 Akbar!

25 "I bear witness that there is no God but Allah and

1 that Muhammad is his messenger. Our actions came with a
2 message and that is La illaha illallah." That's the statement
3 of faith you heard.

4 "The U.S. government is killing our innocent
5 civilians, but most of you already know that. As a Muslim, I
6 can't stand to see such evil go unpunished. We Muslims are one
7 body. You hurt one, you hurt us all. Well, at least that's
8 how Muhammad (peace be upon him) wanted it to be forever.

9 "The ummah," which we know is the Muslim nation, "is
10 beginning to rise and awaken...has awoken the mujahideen," the
11 holy warriors, "know you are fighting men who look into the
12 barrel of your gun and see heaven. Now, how can you compete
13 with that?

14 "We are promised victory and we will surely get it.
15 Now, I don't like killing people innocent people. It is
16 forbidden in Islam. But due to said, it is allowed. All
17 credit goes to Allah."

18 You've all sat through the evidence in this case. You
19 know it better than anyone. The evidence here speaks for
20 itself, and so I'm going to simply present that evidence to
21 you. Some of it. Because pictures speak louder than words,
22 I'm going to direct you to some of the images on your screens.
23 I have a screen here when I want to point something out to you.
24 The evidence I'm going to show you will give you the confidence
25 to conclude that the defendant did indeed commit each of the

1 crimes that are charged in the indictment.

2 THE COURT: Jurors in the back row, you should get
3 your monitors ready.

4 They're active now.

5 MR. CHAKRAVARTY: We'll start with a video of the
6 crime itself, at least the first crime, the marathon bombing.

7 (Video recording played.)

8 MR. CHAKRAVARTY: You remember this clip from the
9 timeline video. It was about 2:37 in the afternoon when
10 cameras first captured footage of the defendant and his brother
11 turning onto Boylston Street the day of the marathon. They
12 calmly strolled down the street, each transporting the deadly
13 contents of a pressure cooker bomb concealed in a backpack.

14 You can tell by the defendant's expressions, by the
15 casual way he walks, that he is entirely untroubled by what he
16 is about to do. That's because the terrorist literature and
17 the lectures and the songs that he had been consuming for over
18 a year had convinced him that what he was going to do was just.

19 His brother takes position down by Marathon Sports
20 and he waits to coordinate. He's checking his phone. The
21 defendant, on the other hand, is still up by the Forum. After
22 all their planning and preparation, they were looking for the
23 right place to make the impact that they wanted to make. The
24 defendant slung his bomb over his right shoulder, appearing
25 very much like a college student. But that day they felt they

1 were soldiers. They were the mujahidin and they were bringing
2 their battle to Boston.

3 This is the defendant finally approaching his target.
4 Compared to the crowd at Whiskey's, the crowd was much more
5 dense here. There's a bar behind him, a restaurant. People
6 are having fun. There's cheering, there's clapping. People
7 are egging on the runners. There's a cow bell behind them.
8 There are people coming and going. And in front of him, you
9 can't help but see them, there's a row of children on the
10 barricade.

11 He puts the bomb down as soon as he gets there right
12 behind that tree. So he's on the grate. Between the tree and
13 him there's no place for people to walk. Nobody was
14 accidentally going to step on his bomb. And there he hovers
15 over it, surveying the crowd, seeing the children again, seeing
16 the Richard family. He's contemplating. He's waiting for his
17 brother to get in position. He's thinking about what he's
18 right about to do, about the plan that he and his brother have
19 set in motion.

20 It's about this time, 2:48, that he checks his bomb
21 for one last time, and then he gets ready to make his phone
22 call to his brother to tell him that things are a go. He's
23 making his call. Remember, ladies and gentlemen, this was a
24 19-second call. It coordinates with his phone records. We
25 don't know exactly what he said, but we know what he told his

1 brother. He told him he was in position. He told him it was
2 go time.

3 He thought his cause was more important than the
4 people around him so he picked this place because it would
5 cause massive damage. Look at how thick the people are there.
6 It would cause memorable damage. He picked this place. And he
7 was waiting for his brother. He's waiting. He knows it's
8 coming. And there it is. He waits for a moment, and then like
9 a salmon upstream, he's on his way up, and right before he
10 leaves the screen he turns his head. This is the defendant
11 running away, pushing people out of the way. He's got places
12 to go.

13 The fact that he exploded the bombs was devastating.
14 His bomb we have the devastation on video. We didn't dwell on
15 it during the trial but I'm going to play a short clip for you
16 now. I'd just ask you to focus on where the Richards' family
17 is, and I'd ask you to focus on what happens after the
18 explosion.

19 (Video recording played.)

20 MR. CHAKRAVARTY: The defendant is over here. He puts
21 down his phone. Bill Richard is here, Denise Richard is over
22 here, and Martin and Jane and Henry are in front.

23 (Video recording played.)

24 MR. CHAKRAVARTY: Remember the video that Colton
25 Kilgore shot? Remember, he was the photographer. He

1 reflexively just started hitting "record" after the bomb blew
2 up at Scene A. He captured some of the sights and sounds of
3 the chaos and the terror that everybody was experiencing that
4 day. So we're going to play some of that so you can hear it
5 for yourself and bring yourself back to it.

6 (Audio and video recording played.)

7 MR. CHAKRAVARTY: That's Rebekah Gregory. Remember
8 how she said she was hoisted into the air, thrown back? She
9 immediately began searching for her son, despite the fact that
10 bones were sticking out of her hands. Clearly you see her leg.
11 She saw terror on everybody's faces. Finally she heard her
12 son's cries. She was placed into a medically induced coma as a
13 result of the blast. She's had 18 surgeries. Foreign objects
14 are still in her body.

15 Remember Shane O'Hara? He was the manager at the
16 Marathon Sports right there? He said all he could do was hear
17 screaming and cries. He heard someone say, "Stay with me.
18 Don't leave me." He and others rushed to find materials for
19 tourniquets. He said he never thought he would have to choose
20 who to help, whose life to try to save.

21 That's Rebekah Gregory right there. And that's
22 Krystle Campbell screaming in pain. She lies dying on the
23 sidewalk.

24 You'll recall Sydney Corcoran, the young lady who's
25 now a sophomore in college. She was there with her family like

1 so many others. She told you what it feels like to feel the
2 lifeblood slipping out of your body. She said she started
3 feeling cold, but peaceful, as the blood left her body.

4 Karen McWatters, who spent the afternoon with Krystle
5 Campbell, described what a beautiful day it was. She posted a
6 photo on Facebook that she and Krystle took in the public
7 garden a short time earlier. When the bomb went off, Karen saw
8 the smoke, the chaos, confusion. She asked herself whether she
9 was dreaming, if this nightmare was a reality. That's Karen
10 and Krystle.

11 Officer Frank Chiola was one of the first to respond
12 to Krystle Campbell. He described her injuries in two words:
13 Complete mutilation. When the explosion happened there was
14 complete silence, he said, and then the screaming began.

15 And then there was Jeff Bauman. Bauman lost both of
16 his legs. You could see him here with his body torn apart.
17 And as he lay there with what remained of his legs in the air
18 he thought very clearly, "We're under attack." And when he
19 later woke up in the hospital, he remembered the man who placed
20 the bomb that blew him up. It was the defendant's brother,
21 Tamerlan Tsarnaev.

22 But nobody was able to remember the defendant at Scene
23 B, at the Forum. That's because he blended in. To be
24 successful, he had to lie in wait trying not to draw attention
25 to himself. This image shows the moment after the defendant

1 called his brother to say that they were a go a moment after
2 this. He checked on his bomb and then he made his escape. He
3 swiveled his head around right at the last second, once he was
4 right outside of the blast radius. This is him turning his
5 head just to make sure he has enough space, and then the bomb
6 goes off.

7 Alan Hern, the teacher from California, recalled how
8 he and his family had been lined up near Martin Richard and
9 Jane Richard and the other children. He said the injuries that
10 he saw were something out of a war zone. He recalled finding
11 his 11-year-old son Aaron on the ground, eyebrows singed. His
12 legs were black. His left thigh was mangled and bloody. "It
13 really hurts, daddy. It really hurts," he said. Aaron was put
14 on a breathing tube. And he had zipper-like wounds down his
15 legs, BB marks on his abdomen. They found bone fragments of
16 someone else inside his body.

17 This is the defendant hiding behind the tree looming
18 over the row of children behind whom he placed his bomb. It
19 was a heavy bag. The decision must have weighed on him. But
20 these children weren't innocent to him; they were American. He
21 knew what the bag contained and what it was designed to do.
22 And of all the places that he could have placed this bomb, he
23 placed it right here.

24 He stood behind it for four minutes. We cut some of
25 that out when we played it a moment ago. Four minutes. He

1 watched people come and go. You heard that these children
2 never left. He decided to place it here. Bill Richard then
3 told you what happened to his family. He told you about that
4 morning. He told you about the fact that the marathon was a
5 family tradition and everyone hurriedly left the house in
6 excitement. The children had participated in the youth relay,
7 and they were looking forward to the marathon and the ice
8 cream.

9 Jane was six years old when the defendant tore her leg
10 from her body. His bomb injured her all the way up from her
11 head, behind her ear, her back, her torso, down to her legs.
12 Bill Richard saw her through the smoke, he smelled a vile
13 smell. He just wanted to get it off his body. You can see her
14 on that video we just saw trying to stand but not having a leg
15 to stand upon. Bill grabbed her and his son Henry. And then
16 do you remember what he told us? He saw his other son through
17 the smoke. He saw Martin Richard. He knew he was dead. He
18 could tell just by looking at him. The defendant had killed
19 him. He could not bear to lose Jane as well, and so he grabbed
20 Jane. And with the help of Matt Patterson, they went to try to
21 stop Jane's bleeding. They saved her life. Patterson, you'll
22 recall, described Jane's leg looking as though it had just been
23 put through a meat grinder. The defendant blinded Denise
24 Richard, Jane's mother, in one eye. Of course he took Martin.

25 Jessica Kensky was a nurse. You'll recall she was a

1 newlywed who wheeled herself up onto that witness stand. She
2 said the medical tent where she was taken looked like it was
3 treating soldiers on a battlefield. They were war wounds. All
4 she could feel was terror. Sheer terror. She heard
5 animalistic screams. Bomb parts, pieces of steel and dirt had
6 been blown into her body.

7 She explained that parts of her body had been blown
8 off and she had unbearable burns. Her husband Patrick also
9 lost a leg. Shrapnel had ripped through him, tearing apart his
10 skin and causing infection.

11 Danling Zhou was Lingzi Lu's friend. They were also
12 at Scene B. They were both international students who had come
13 from China to come to Boston to study at graduate school. They
14 chose to go to the marathon that day to experience something
15 that was classic Boston but had the eyes of the world on it.
16 They made a day of it, shopping, having lunch on Newbury
17 Street, trying to get over to the Prudential Building to get
18 Danling's phone fixed at the Apple store. And as they made
19 their way up Boylston Street, the defendant's bomb went off.

20 This is Lingzi Lu with her hands over her face. This
21 is Danling Zhou, whose abdomen was ripped apart. She's leaning
22 against the railing. There's Bill Richard, Henry, Jane, Aaron,
23 Roseanne Sdoia over here. And there are other victims.

24 Danling told you that her internal organs were
25 spilling out of her body. She had to hold them in. She told

1 you that the man she saw in front of her seemed like he was
2 yelling in slow motion. He didn't have a leg anymore. She
3 looked to her friend, Lingzi Lu, who was flailing her arms.
4 Danling thought that she was going to make it, but she didn't.
5 The defendant killed her too.

6 Dr. Bath said it looked like people had dropped like
7 puzzle pieces in front of the Forum. He tried to help whoever
8 he could but it was too late for Lindsay. Her leg had been
9 flayed open. They tried CPR. You heard Officer Woods and
10 others cleared her airway and she vomited, but by the time the
11 paramedics arrived, it was too late.

12 Dr. Bath was surrounded by screams, parts of limbs,
13 tissue, burned clothing. Eventually he was able to get a
14 tourniquet on one victim. And that's how others saved others
15 that day. First responders and others were able to get
16 tourniquets on people and they were rushed to the hospital.
17 EMS Director James Hooley told you that 30 people were given
18 red tags.

19 Do you remember the red, green and yellow tags? The
20 red tags meant that they had life-threatening injuries, that if
21 they didn't get to the hospital in an hour, then they would
22 die. Fortunately, except for Krystle Campbell, Lingzi Lu and
23 Martin Richard, all of them did make it to the hospital. And
24 even so, the defendant and his brother maimed 17 more and
25 injured at least 240 others.

1 After they fled the scene they decided to lay low for
2 a while. In fact, the defendant acted as if nothing had
3 happened. He bought milk at the Whole Foods, calmly walking up
4 and down the aisles, and he even came back a little later to
5 replace this milk because he didn't get the one that he wanted.

6 You'll recall his demeanor, his strut walking up and
7 down those aisles. He was just blending back in. He returned
8 to UMass Dartmouth and decided to go to the gym, get a little
9 workout in. This is him joking, laughing with his friend.
10 About an hour later he finishes his workout, just hanging out
11 with his friend.

12 After the bombing he decided to tweet about it.
13 Remember this one? "Ain't no love in the heart of the city.
14 Stay safe, people." How about this one? "I'm a stress-free
15 kind of guy." Why did he choose to post these things at this
16 time after what he had done?

17 In the days after the bombing, along with these
18 tweets, the computer evidence and the online social media
19 materials show you that the defendant was publicly pretending
20 to be just like everyone else while inside, in fact, back on
21 his computer, he was accessing the same jihad materials that he
22 had looked at before the bombings: *Inspire* magazine.

23 In fact, on April 16th, the day after the marathon
24 bombings, he accessed this *Inspire* magazine. This is the one
25 that talks about how to make the pressure cooker bombs and how

1 to make pipe bombs. This picture down here is a clip from that
2 portion that you saw that shows how to make the pipe bombs. He
3 opened it up, and a few days later you all know that they had
4 assembled five pipe bombs, another pressure cooker bomb and the
5 Rubbermaid device.

6 Also on April 16th, the day after the bombing, the
7 computer evidence shows that the defendant accessed the
8 "Effects of Intention" document. Dr. Levitt talked about that
9 document and he told you that the essence of that document was
10 that if you're going to engage in jihad, you have to be sincere
11 about it. You have to do it for God; you can't do it for some
12 other reason. If you want to get the rewards, you have to be
13 sincere.

14 That same day he also accessed the fall issue of
15 *Inspire* magazine, the second issue. And in that one, among
16 other tips about what to do in jihad, it included a declaration
17 of Anwar al-Awlaki who Dr. Levitt told you about. And
18 Dr. Levitt read this excerpt as he went through the writing on
19 the boat. And this is what he said:

20 "According to these scholars, we the Muslims are not
21 allowed to terrorize the Israelis or the Americans or the
22 British who are living in safety and security while millions of
23 Muslims are being terrorized by them. We are told to never
24 mind the insecurity of the Palestinian or the Chechen or the
25 Kashmiri. Never mind them. We are simply never allowed to

1 terrorize, period. No. We do not agree with that. We say
2 that whoever terrorizes us, we will terrorize them and we will
3 do what we can to strip them of their safety and security as
4 long as they do the same."

5 And that's precisely what the defendant wrote in the
6 boat a few days later: "Stop killing our innocent people and
7 we will stop."

8 These were deliberate choices. These were political
9 choices. He thought his values were more important than
10 everyone else. He was making a statement: An eye for an eye.
11 You kill us, we kill you. That's what he read, that's what he
12 said, and that's what he did.

13 Witnesses described the 12-block radius that was
14 carved out of the Boylston Street crime scene, the lockdown.
15 The FBI and other agencies gathered evidence. They gathered
16 pieces of pressure cookers, cloth from backpacks, shrapnel from
17 the bombs. They also gathered photographs, surveillance video.
18 The photos in the videos revealed that the defendant and his
19 brother had, in fact, exploded the bombs, although the FBI
20 didn't know who the defendant was, who his brother was. So on
21 Thursday, three days later, April 18th, the FBI released some
22 of the images and asked for the public's help in identifying
23 the bombers.

24 The photos and the videos were broadcast all over the
25 world. They were accessed millions of times on the FBI's

1 website. A few hours later the defendant picks up the phone.
2 He speaks with his brother, and then he returned to Cambridge
3 from UMass. Remember, he went back down to his dorm room with
4 his friends in the intervening three days.

5 And you know that he came back because Chad
6 Fitzgerald -- he was the FBI agent from Atlanta, who was the
7 cell site location specialist -- he showed you that the
8 defendant's cell phone pinged down in Dartmouth at first and
9 then came back to Cambridge.

10 And when he came back, he had this text message
11 exchange with one of his friends, Dias Kadyrbayev. And in it
12 Dias asks him whether he saw the news. And he says, "Yeah,
13 bro. I did." And Dias says, "For real?" The defendant says,
14 "I saw the news. Better not text me my friend, LOL," or laugh
15 out loud. "You saw yourself in there?" Dias asks. "If you
16 want, you can go to my room and take what's there. Salaam
17 alaikum."

18 Now that their faces were all over the news, they
19 decided to move on with the rest of their plan. He knew he
20 wasn't going back. He gave Dias his computer and stuff in his
21 dorm room, including the backpack with the fireworks in them.
22 He and his brother loaded the pipe bombs and explosive powder
23 and the pressure cooker bomb, the CD with the jihad songs on
24 it. They took Tamerlan's computer, that external hard drive
25 that you heard so much about, the remaining transmitter and

1 some identifying documents. They needed these things for what
2 they planned to do next. They were going to go to New York to
3 continue setting off bombs.

4 Most importantly, they brought the gun that the
5 defendant acquired from his friend Stephen Silva. But there
6 were two of them and they needed two guns. And they only had a
7 Ruger and that pellet gun, which you know looked real. It
8 would probably work to stick somebody up. It couldn't kill
9 like a real gun. So they decided to go over to the MIT campus.
10 It's a short drive away from their house in Cambridge.

11 Chief DiFava told you about Sean Collier that
12 morning -- that day -- excuse me -- that evening, how they
13 chatted that evening and the chief told him to be safe.
14 Officer Collier was working the night shift, and Sergeant
15 Henninger had checked in with him earlier that evening. About
16 10:20 p.m. the 911 call came in. Some gunshots, some hitting
17 of trash cans.

18 And you know through surveillance video that the
19 brothers were driving their Honda Civic that night. They may
20 have actually seen Officer Collier parked next to the Koch
21 building as they drove by.

22 There's the Koch building. They decided to walk all
23 the way around the Koch building and approach him from the
24 rear. They had a plan, they knew exactly what they were going
25 to do, and they just had to execute it.

1 (Video recording played.)

2 MR. CHAKRAVARTY: They get to the car. They
3 immediately force open the door. They stick their gun at
4 Officer Collier, then about ten seconds you'll see Nate
5 Harriman come by on his bicycle. There he is.

6 (Video recording played.)

7 MR. CHAKRAVARTY: The brake lights go off, then they
8 go back on. The defendant and his brother run away.

9 This was a purposeful mission. They needed that gun.
10 They had already agreed on how to assassinate him and they did.

11 We can't tell who shot Officer Collier. That's what
12 we know. We know he was shot in the hand, possibly as he was
13 reaching for the microphone, on the radio. We know he was shot
14 twice in the head at close range. Remember Dr. Robinson
15 explain that there was stippling in the head wounds? He was
16 shot between the eyes. They assassinated him.

17 You also know that the brothers tried to get the gun
18 from Officer Collier's gun belt but they couldn't. Remember
19 when the officers arrived on the scene, they saw the gun belt.
20 The gun itself had been smeared with blood. And they saw that
21 the first stage of that three-part safety system had been
22 undone. But they didn't know how to get the second and the
23 third stage out, so they left without the gun. They had
24 failed. They had risked being detected, they risked being
25 caught just to get that gun because they needed it for what

1 they were going to go do next. They wanted to go out and use
2 the remainder of the bombs that they had built. They wanted to
3 go out in a blaze of glory.

4 So we don't know who shot Officer Collier but we know
5 that Officer Collier's blood was found on the defendant's car
6 keys in the Honda Civic in the ignition with the UMass
7 Dartmouth fog. We know that Officer Collier's blood was found
8 on the gloves that were found in the floor well of the driver's
9 seat of that same Honda Civic that the defendant was driving
10 that night. We know that Officer Collier was shot with the
11 Ruger that the defendant procured from his friend Stephen
12 Silva. And we know that Nate Harriman, as he passes them in
13 front of the Koch building that day, makes eye contact with the
14 defendant. And you saw the defendant had been leaning in and
15 he comes out and he makes eye contact and then he leaves.

16 Officer Collier didn't have a chance. You heard his
17 injuries were incompatible with life. Just think about what
18 Nate Harriman told you. He saw the defendant leaning in. So
19 in those few seconds the defendant probably felt Officer
20 Collier's last breaths. He probably heard the gasping or the
21 gurgling that his fellow officers heard a little while later.
22 That didn't deter him any more than seeing what happened on
23 Boylston Street deter him, because he felt what he was doing
24 was right. He felt he was standing up for others.

25 They knew their time was short. Frustrated by their

1 failure to get the gun, the brothers knew they needed another
2 car, and they went across the bridge and found Dun Meng.
3 Remember how terrified Dung Meng was but how clear-headed he
4 was, how clearly he thought through how was he going to get
5 through this.

6 And when they got to Watertown, he'd noticed the
7 defendant had been following him the whole way and that both of
8 the brothers moved things from the Honda Civic into the
9 Mercedes SUV. And then they went back into town to try to go
10 get gas and money. Meng describes them talking to each other,
11 like partners, in a foreign language. They were communicating.
12 It was a team.

13 They went to the ATM in Watertown and the defendant
14 demands Meng's PIN number. He saw the defendant coolly walk
15 into the ATM, take out the money, money he still had in his
16 wallet when he was arrested the next day. The defendant and
17 his brother asked if the car can go out of state, go to New
18 York. And Meng said that it could, in fact, go to New York.
19 He had gone there a couple of times -- a few times.

20 But first, before they made that long drive to New
21 York, they went back to Watertown where the Honda Civic was so
22 they could get that CD, a CD containing those jihad nasheeds on
23 it. Meng said it was a style of music that he had never heard
24 before. And Dr. Levitt told you what it was. It was portable
25 inspiration, a CD full of songs, chants.

1 Finally, they go back towards Boston. They need to go
2 to a gas station, so they stop at a gas station that the
3 defendant knew very well. He knew it because it was across the
4 street from Stephen Silva's house. You'll recall that he and
5 Stephen Silva would go there and get smokes occasionally.

6 He asked Meng how much gas the Mercedes could hold,
7 and they were going to go pay in cash. And then the defendant
8 goes into the store to get some snacks for the long drive to
9 New York.

10 Now, the snacks seem trivial but they show the
11 defendant and his brother were on their way to New York for
12 purposes of doing something. Not running away. That's Red
13 Bull in his hand. Those are snacks in his hands. They needed
14 their energy for the long drive and for what they were going to
15 do when they got there. They had more bombs and they were
16 going to use them. They were a team. You'll also notice that
17 this hat, it was the same hat the defendant was wearing a
18 little while earlier. They were a team. That's how they
19 rolled.

20 But Tamerlan turned his attention to the GPS while
21 they were waiting in the car, and that's when Meng acted. He
22 got up -- and you saw the terror in his face, you'll see it in
23 a second. And he ran across the street from one gas station to
24 another. This is him pleading to call 911. And that was more
25 significant than we might know because Meng's escape was more

1 than just a setback for the defendant and his brother. Now the
2 police would know the car -- the new car that they were
3 driving. So they had to go back to Watertown, they had to
4 ditch the Mercedes, they had to get back into the Civic and
5 then head back off to New York.

6 And they must not have expected that the police would
7 have reacted as quickly as they did. In Watertown, Officer
8 Joseph Reynolds was the first on-scene. Remember, he passes
9 first the Honda that the defendant was driving, who was in
10 front -- he was leading -- and behind him was the Mercedes.
11 And they were driving slowly around Dexter Ave. in Watertown.
12 Officer Reynolds passes them, calls it in, and they say, "Wait
13 for backup before you light him up," before you hit the
14 flashing lights.

15 But he turns around, he doesn't light them up yet, he
16 turns around, he starts to approach, and that's when Tamerlan
17 greeted him with gunfire around through the windshield. What
18 did the defendant do then? He didn't keep going like he didn't
19 know what was happening. He then stopped, he got out of his
20 car, he got in front of the Mercedes with his brother, and he
21 took his position. They had planned this.

22 It was the brothers' last stand. They go into the
23 bag, they pull out bombs, they pull out backpacks, the
24 ammunition, the extra magazines, they pull out their lighter,
25 even the pellet gun. And the police saw two sets of muzzle

1 flashes. While one was shooting, the other was lighting and
2 throwing the bombs. Since we know that Tamerlan was shooting
3 many of the rounds of the Ruger, we know that the defendant was
4 the one lighting the fuses for at least two of the pipe bombs.

5 Sergeant MacLellan saw the defendant throw the second
6 and the third bomb. Remember, he said he threw it like a hook
7 shot as opposed to like a baseball like Tamerlan threw it. He
8 said he threw the second bomb like a hook shot and then,
9 remember, the pressure cooker bomb? He heaved it like this.
10 And you all felt how heavy those are.

11 The officers probably saw the flashing of the lighter
12 as that second muzzle flashed, but whatever the point, the
13 defendant hurled that pressure cooker bomb, he hurled the pipe
14 bombs. And they were in this together. Officer Reynolds
15 screamed to Sergeant MacLellan to look out. And then Sergeant
16 MacLellan described that explosion. He described how it shook
17 him to his knees. How the explosion was horrendous. The plume
18 of smoke went up about two stories. There was debris being
19 scattered everywhere.

20 And you saw what happened to the pressure cooker bomb.
21 It shot like a missile, embedded into that Honda where
22 MacLellan had just been standing, where his cruiser had been
23 crashed into that Honda. The lid of the pot had gone two
24 stories up, into a house and into the neighbors' yard.

25 There were several pauses in the shooting, and now we

1 know that they also had to reload. You'll recall the
2 ballistics evidence, Lieutenant Cahill. The Ruger shot 56
3 rounds that they collected, the casings that they collected.
4 And the three magazines that they had with them, the
5 extended-capacity magazine and the other two magazines, between
6 them could hold 38 rounds. That means they were refilling
7 these magazines and reloading the gun. And it also explains
8 why the defendant's fingerprints are on the ammunition box and
9 also why there was a half-filled magazine in the Mercedes that
10 they -- that the defendant used to escape.

11 They were partners. Each one was doing their part.
12 This shows the defendant either crouching or getting ready to
13 throw one of the pipe bombs. James Floyd: Remember, he was
14 one of the neighbors there? He was the one with the newborn.
15 He had to take the newborn to the back of the house for safety.
16 And he comes back and he looks out the window. And he said
17 they were -- both of the brothers were ducking in and out. You
18 could barely distinguish the two. But he did know that it was
19 the defendant who pulled something out in a bookbag and he
20 threw it. And he showed us.

21 Sergeant Pugliese, who had been flanking, came from
22 this direction. He felt the debris falling on him. When he
23 emerged from that house, behind that fence, he took aim and he
24 shot at Tamerlan, first directly and then he tried to skip shot
25 him underneath to try to get him at the ankles.

1 He got Tamerlan's attention, and Tamerlan turned to
2 him and tried to shoot him, and he missed him every time. And
3 after he ran out of bullets, he threw the gun and he charged up
4 the street at the police officers. Tamerlan at that point was
5 done. He wanted to commit suicide by cop. He was ready to get
6 to heaven.

7 While the defendant -- while Tamerlan was ready, the
8 defendant had other plans. He was still behind the Mercedes.
9 And like I said, he didn't go with Tamerlan. He didn't go the
10 other way. He didn't just give up. He got back into the car,
11 he turned it around, and then James Floyd told you what he saw
12 and what he heard. Despite the fact that there was no one in
13 front of him and he could have escaped, Floyd said that he
14 floored it. He turned around and he floored it. He really
15 floored it -- the engine roaring -- and he made a beeline for
16 where Tamerlan and Sergeant Pugliese and Sergeant MacLellan and
17 Officer Reynolds were.

18 The defendant drove from the right side of the road
19 straight for them. They got out of the way just in time, as
20 you saw. The defendant hit the brother, he dragged him down
21 the street. When he hit Officer Reynolds' cruiser, almost
22 striking Officer Colon, Officer Colon saw him. Remember, he
23 saw him driving like this. The defendant still had the
24 presence of mind to avoid the gunfire as he was making his
25 escape and as he was aiming for the police.

1 Now, at some point during that escape, the defendant
2 got shot. We know because he was bleeding sometime later. And
3 as the police finally subdued Tamerlan, they realized that
4 Officer Donohue had also been shot. Remember Dr. Studley
5 described that he had lost all of his blood by the time that
6 she was treating him. Amazingly, she and others brought him
7 back, and but for the defendant's actions, carjacking this
8 vehicle, the defendant and his brother, that chain of events
9 would not have happened and Officer Donohue would not have been
10 shot. He would not have been seriously injured. That's why
11 it's charged in the indictment, as a result of the carjacking
12 caused serious bodily injury. And that's what happened here.

13 The defendant abandoned the Mercedes, leaving the
14 Rubbermaid bomb and the other items in it as he fled. And
15 since he made the decision to drive the police [*sic*], he knew
16 now that he was all alone. His brother was gone. He was
17 injured. He made his way down that hill.

18 The blood marks you heard, there were some on a
19 bathroom door, on a shed, on a car, and then on the boat
20 itself. David Henneberry's boat, the Slip Away II. The
21 defendant could not have imagined that this was where he was
22 going to write his prophetic statements to the world.

23 But before climbing in, he wanted to do that one last
24 thing. Remember, he had two phones. He had that burner phone,
25 we call it, which he had just activated that SIM card on that

1 Sunday before. He put the SIM card in and he used that phone
2 to talk to his brother about planning the bombing, executing it
3 and then what happened after.

4 His other phone was the phone he used all the time.
5 It was the phone he was using to talk to his friends. It was
6 the phone that he was using to surf the Internet, to read
7 documents. At his age, he lived on that phone. Even in the
8 video you see him, you see him always fumbling with his phone.

9 So he had the presence of mind at that stage to smash
10 those phones beyond recognition. He knew those phones could
11 track him, and he knew by smashing those phones neither the
12 FBI, the state police, the Boston police or Watertown nor
13 anybody was going to be able to extract the data that would be
14 useful in the investigation. He takes Dun Meng's card and he
15 throws it down there. That's Dun Meng's card, that's the
16 phone, both phones pulverized.

17 He was in the boat for a while. And after pulling
18 himself in, he pulled out a life preserver. You saw some of
19 the pictures and you saw the boat. He tried to get
20 comfortable. And he laid there probably thinking he wouldn't
21 survive. He had been hurt. And in those moments of all of the
22 things in the world to say, he chose to write that declaration
23 we saw. He chose to justify what he did.

24 But even after writing those words, that well thought
25 out, cohesive narrative, he still was angry. People were

1 looking for him, he was hiding in this boat, and he was still
2 angry. He was so angry he had to get something. And he had
3 etched into boards on the slat. As if his note wasn't clear
4 enough, he had to emphasize it. "Stop killing our people and
5 we will stop."

6 He was negotiating the terms of death with America.
7 This is what the defendant was thinking after all he had done
8 that week. In the evening, David Henneberry noticed the blood
9 on his boat. He investigated and saw the defendant lying in
10 it. Minutes later, he was surrounded. At one point the police
11 shot at the boat, not knowing whether the defendant was armed,
12 whether he still had any bombs on him. They threw flash bangs
13 then, hoping -- convincing him to give up, and eventually he
14 was arrested.

15 The investigation of the defendant and his brother
16 lasted two years. You saw that he first started accessing the
17 *Inspire* magazine when they were in -- approximately Christmas
18 of 2012. We know both the defendant and his brother were
19 radicalized to believe that jihad was the solution to their
20 problems.

21 We know that both of them participated in the bombing,
22 the murder of Officer Collier, the carjacking, the robbery of
23 Dun Meng, the standoff with the police in Watertown. The
24 fingerprint evidence showed the defendant's prints in many
25 places that you would expect them: On the driver's side of the

1 Honda that he was driving, on the radio where he was listening
2 to his nasheeds. His prints are on the gas tank of the
3 Mercedes where he tried to fill it up with gas. They are also
4 on the front passenger quarter where he, as you see in that
5 picture, was holed up, taking cover in the shootout. They're
6 also on the nasheed CD that was found in the radio of the
7 Mercedes. His prints are on the ammo box that were found on
8 Laurel Street. They're on the Rubbermaid bomb that was found
9 in the back of the Mercedes. They're also on that pellet gun.
10 Tamerlan also left prints where you would expect them.

11 But the defendant was more careful. Unlike Tamerlan,
12 the defendant had led a double life. To the outside world he
13 showed one face and inside he harbored another. He was
14 careful, just like *Inspire* magazine had taught him to be.

15 Explosive technicians examined every piece of evidence
16 found in Watertown and on Boylston Street and tried to
17 re-create how the devices were made. You saw that. Who knew
18 that making a bomb was so easy? Well, the terrorists. The
19 publishers of *Inspire* magazine. That's who knew. And they
20 were just hoping, they were wanting, they were asking for some
21 young terrorist to come by and to use their instructions. And
22 that's what the defendant and his brother did.

23 You heard how there was no explanation for how and
24 where all the pounds of explosives that were necessary to build
25 all these bombs, where they were purchased or where they were

1 built. You heard that there was some trace explosives in the
2 apartment in Cambridge, at 410 Norfolk Street, and there were
3 intact fireworks down at the dorm room in Dartmouth. But given
4 how much explosives were necessary, much more was expected.

5 Many of the materials that were consistent with those
6 that were used to construct the devices were found at the
7 Norfolk Street apartment where Tamerlan and his family lived
8 and the defendant would visit from time to time, where he had
9 grown up. Some of those materials were found conspicuously in
10 the defendant's bedroom there, where he had spent the weekend
11 before the bombing.

12 There was the construction paper -- the red
13 construction paper, the caulk gun, the gun-cleaning equipment.
14 You also know that from the swipe card data from UMass
15 Dartmouth that he hadn't been down at UMass for days before the
16 bombing.

17 It's clear that both the defendant and his brother
18 were partners. They both handled the bombs. The evidence
19 shows that the defendant and his brother transported, placed
20 and exploded the bombs on Boylston Street and in Watertown. In
21 addition to the eyewitness testimony, people like James Floyd
22 and Sergeant MacLellan, we know that the defendant committed
23 these crimes, threw the pipe bombs, the big pressure-cooker
24 bomb in Watertown.

25 The brothers prepared for their attack. They also

1 coordinated with each other, as partners do. The investigation
2 revealed that the pressure cookers were probably bought at
3 Macy's; for the January 31st, purchased from the Square One
4 Mall in Saugus. It was probably Tamerlan although there is no
5 video and it was a cash purchase. But who was he texting just
6 before making that purchase? Who was he talking to earlier
7 that day? The defendant.

8 Tamerlan bought the backpacks on that Sunday
9 afternoon, the day before the bombing. That same afternoon the
10 defendant went somewhere else to buy that SIM card for his
11 phone. It may have been Tamerlan who bought BB's up in New
12 Hampshire, but there was a box of BB's in the defendant's dorm
13 room down at Dartmouth.

14 Tamerlan bought the remote control car parts on the
15 Internet, first from Flysky, and then at the other -- RC Hobby
16 Car shop for the Spectrum set. And that was a week before the
17 bombings. By that time, a week before the bombings, the
18 defendant and his brother were fully engaged in their
19 conspiracy to plant these bombs. They knew what they were
20 going to do. In fact, the same day as that transmitter
21 purchase, the defendant tweeted this: "If you have the
22 knowledge and the inspiration, all that's left is to take
23 action."

24 They each had their roles. Around the same time that
25 Tamerlan was ordering that first transmitter, the defendant was

1 ordering up a gun from his friend Stephen Silva. Stephen Silva
2 had just come in to a gun, and he said he could let the
3 defendant borrow it for what the defendant said, so he could
4 rob a couple of University of Rhode Island students.

5 Remember Silva's testimony? Silva had known him since
6 he was a kid. Silva couldn't imagine that the defendant was
7 capable of doing something like this, but he didn't know the
8 jihadi side of the defendant. He took the defendant at his
9 word when in January or February he asked for the gun for the
10 robbery. The defendant also had asked him for the food for the
11 dog, which was a reference to the ammunition for the gun.

12 And obtaining this gun was the key that the defendant
13 and his brother needed for what happened after the bombings.
14 Without this gun, they wouldn't have been able to kill Sean
15 Collier. Without this gun, they wouldn't have been able to
16 hold up Dun Meng. Without this gun, they wouldn't have been
17 able to shoot at police officers in Watertown. The defendant
18 had done his job well.

19 Silva didn't know that in March, spring break, the
20 defendant and his brother went back up to New Hampshire to go
21 to the gun range up there. There they practiced shooting 9
22 millimeters. The defendant paid, and for an hour the two of
23 them spent about \$170 just shooting. It's easy to wonder what
24 they were imagining were targets as they were shooting.

25 But in this case, ladies and gentlemen, we don't have

1 to wonder. We know that they were imagining police officers
2 because that's what they used -- that's what they used the gun
3 to actually shoot at.

4 We've seen other evidence of the defendant's double
5 life. There were sides of himself that he did not show to his
6 friends. Around them, Stephen Silva told you, he was well
7 liked, he would smoke pot, he was cool, he was laid back, but
8 there were signs of another side to him.

9 Silva mentioned one time the defendant called him an
10 infidel or a kafir, another where the defendant got pissed off
11 when Silva called him a Russian refugee. Silva rarely visited
12 him at his house. The defendant spent most of his other life,
13 the other side, the jihadi side, in the privacy of his bedroom,
14 sometimes with his brother, sometimes with his headphones on.
15 There he descended into violent Islamist extremism.

16 The computer evidence showed you that since 2011, well
17 before the missing thumb drive that you heard about, he had
18 been accessing these jihad nasheeds and other inspirational
19 media on his laptop. The defendant got the stuff, he read the
20 stuff, he believed the stuff, and he acted on it. That's what
21 the computer evidence shows. He assembled a library. Some of
22 it Tamerlan gave him; some of it he gathered himself. The
23 defendant would put his headphones on and lose himself in the
24 chants, the lectures, the music of jihad. He escaped when he
25 put that music on. And that's why he put it on all of his

1 phones, his iPods, his computer, all without his brother.

2 In fact, even after his brother left for Russia, the
3 defendant was accessing jihadi materials on his computer. He
4 was accessing Anwar al-Awlaki. That's why he went back to
5 Watertown to grab that CD of jihad -- nasheeds CD -- nasheeds
6 on that CD before they headed to New York. They were doing
7 this together, just like other terrorists. They had decided
8 that justice for them meant they were becoming holy warriors.

9 The defendant's radicalization started years before,
10 perhaps even in high school. But you saw that no matter when
11 it started, by the time it was Patriots' Day of 2012, the year
12 before the marathon bombings, the defendant had completely
13 internalized Anwar Awlaki's message. He posted this quote:
14 "They will spend their money, and they will regret it, and they
15 will be defeated." Now, none of his friends would know what
16 this means unless they, too, had listened to Anwar Awlaki.
17 That day, he went to the marathon with his friend.

18 Later, he accessed some of the jihadi materials on his
19 computer. And on Christmas break of 2012, the Christmas before
20 the bombings, he accessed the *Inspire* magazine with the
21 bomb-making instructions on the desktop computer in his bedroom
22 at 410 Norfolk. The computer evidence shows that this complete
23 file, which is the file of that first *Inspire* magazine, was
24 accessed on December 23rd, again on December 26th, and we know
25 he was accessing his own email on that computer.

1 Of course we also know that he and his brother were
2 planning something then because he said so. This -- sorry.
3 The cell site location also showed that he was at the dorm room
4 -- excuse me, at the 410 Norfolk Street around Christmas of
5 2012. This is Chad Fitzgerald.

6 He even said that he was doing something with
7 Tamerlan -- this is Christmas Day back in 2012 -- doing
8 something with Tamerlan. "I'll hit you up in a bit, bro."
9 Later, talking to that same friend, he explains that he wants
10 to bring justice for his people. This is his mind-set at that
11 time.

12 Later, talking with the same friend in January, he
13 says, "There's one other option, bro. Get the highest level of
14 Jannah." His friend asks whether it's jihad. He says that
15 he's really down with the jihad way of life, and the defendant
16 said, "Don't be hot over the phone. LOL. Be for that, man."

17 Then finally he says here, January 28th, "I got a
18 plan. I'll tell you later about it."

19 He was conscious of the fact that law enforcement may
20 have actually picked up on his conversation. He was careful.
21 That's what you do when you live a double life. What they were
22 doing together was starting their plan to bomb the Boston
23 Marathon. What they were doing together was planning to get a
24 gun. What they were doing together was getting ready for what
25 unfolded.

1 During that time, the defendant starts accessing more
2 websites related to this extremist material, and he creates
3 another alter ego online. He creates this -- another Twitter
4 account called Ghuraba. You heard that means stranger. In
5 fact, he says it right here. "Ghuraba means stranger. Out
6 here in the West, we should stand out among the non-believers."

7 He talks about the infidels and getting victory over
8 them. He talks about the weapons of the believers. And he
9 talks about Anwar al-Awlaki, and he encourages people, his
10 followers, to listen to Awlaki's Hereafter series. It worked
11 on him. He said he strives to reach Jannah, or paradise.

12 We saw from the defendant's computer witness that
13 around March of 2013 it was the defendant who was accessing
14 Awlaki files on that portable hard drive that was found in
15 Watertown. He wished the Silva twins a happy birthday at the
16 beginning of April, he picked up some pot and then he retreated
17 to the place where he found comfort, with his headphones on,
18 with his brother, in his bedroom at 410 Norfolk, his black flag
19 on the wall. He had found the solution for his failures. He
20 had opportunities to make different choices along the way.
21 These are the choices that he made, and that's why we're here.

22 Now, you won't be surprised to know, as the judge
23 already explained to you, that blowing up bombs at the Boston
24 Marathon and the other places is a violation of several federal
25 laws. And the more bombs, the more charges. And while the

1 verdict slip may be long and sometimes confusing, you should
2 not be intimidated. Each of the elements are straightforward,
3 and the crimes are, in the end, pretty simple.

4 Although the defendant's charged with 30 counts, 30
5 different crimes, many of them overlap. You heard from the
6 instructions how some of them overlap, and they interrelate to
7 each other. There are really only six sets of charges. They
8 involve different crime scenes and different acts.

9 Many of the charges are interrelated, so that, for
10 example, using a bomb with a firearm together might be a
11 separate charge than just using the bomb or just using the
12 firearm. And using either of those, the bomb, which is
13 technically called a firearm, in the course of one of the
14 conspiracy charges, the conspiracy to use a weapon of mass
15 destruction, conspiracy to bomb a place of public use, and the
16 other conspiracy charge, that each of those is -- also
17 constitutes a crime.

18 Some of the charges involve a conspiracy, and the
19 judge explained that to you, and it's basically when two or
20 more people agree to do something that the law forbids. That
21 itself is a crime. You don't actually have to go through with
22 it. If you plan to do it, then just that agreement becomes the
23 crime.

24 In this case, there are three sets of crimes --
25 conspiracy crimes. And they relate to the entire chain of

1 events, from the beginning to the end, because this was a
2 terrorist conspiracy; they were trying to inflict terror. The
3 agreement was between the defendant and his brother to engage
4 in this terrorist bombing campaign.

5 And this chart helps you explain -- helps kind of
6 graphically represent how you might want to think about this.
7 I'd suggest to you the best way -- the best tool that you're
8 going to have as you deliberate is the verdict slip itself. It
9 lays things out in a step-wise manner. You can answer one
10 question, then move to the next. And it tracks the language in
11 the indictment. And you can use that as a guide.

12 But just so you have a graphic representation on how
13 to compartmentalize from 30 charges down to about six, put them
14 in this mode. The last conspiracy was maliciously destroying
15 property.

16 The first set of counts involves the marathon bombing.
17 Judge O'Toole told you that the conspiracy is one way to find
18 liability, and the other way is to find through something
19 called aiding and abetting. When two people who do a crime
20 together, where each has a different goal but they both intend
21 to do the same crime and act in accordance with that plan, that
22 they're equally guilty in the eyes of the law. And that's why
23 the defendant is guilty for the crimes in front of Marathon
24 Sports just as much as he is for those in front of the Forum.

25 Each of the two bombs at the marathon killed and

1 caused grave risk of harm. Each were weapons of mass
2 destruction and technically constituted what are called
3 firearms.

4 There's one other element that may not be
5 self-evident, and the judge touched on it, and that's that the
6 place of public use must affect interstate commerce. Clearly
7 the stores, Marathon Sports and Forum, affects interstate
8 commerce. The marathon itself interstate -- affects interstate
9 commerce. And "interstate commerce" basically means that
10 they're in the stream of commerce. And that, as you can
11 imagine, is an element because this is federal court.

12 For some of the other crimes, the interstate commerce
13 element will also come in. That's why -- one of the reasons
14 you heard that there was a stipulation that the Mercedes, Dun
15 Meng's Mercedes, that that too had traveled in interstate
16 commerce, because as part of the carjacking you have to find
17 that that had traveled in interstate commerce.

18 You also heard that the Ruger, the gun, was
19 manufactured out of state, so that too traveled in interstate
20 commerce, again because of one of these elements. And then
21 finally, the ATM card, going in and taking money out of Dun
22 Meng's ATM bank account, which was connected to all the other
23 banks in the country and around the world, that too affected
24 interstate commerce. That's why that information was presented
25 to you.

1 So the first set of charges, the overall conspiracy;
2 then scene A, these are the substantive counts; then scene B,
3 these are the substantive counts at the Forum.

4 Then there are the charges of the murder of Sean
5 Collier, Counts 16 through 18. Those involve using the firearm
6 in order to commit the crime of violence. They're based on the
7 fact that in the course of the conspiracy they used that gun so
8 that they could continue their campaign of terror. And since
9 we've said from the beginning it doesn't matter who pulled the
10 trigger, both the defendant and his brother are equally guilty
11 of committing this crime.

12 Third, you have the use of the -- to skip over the
13 robbery for a second, you have the use of the gun and the bombs
14 in Watertown. These are the charges related to how this
15 defendant and his brother tried to kill the police officers in
16 Watertown. It's hard to imagine how Officer Donohue actually
17 survived and how more officers weren't injured, but for each
18 pipe bomb that had exploded, the pressure cooker bomb and the
19 use of the Ruger -- each of those provides a basis for another
20 criminal charge.

21 And you'll see that these crimes, as you'll see in the
22 verdict slip, they're couplets. So when you use one of
23 these device -- a firearm in the course of committing another
24 crime of violence, then that itself is a crime, and that's why
25 you'll see two pairs of charges for each of those for

1 Watertown.

2 And then finally, the robbery of Dun Meng. He was
3 charged with carjacking Dun Meng's car, and the fact that
4 Officer Dick Donohue was seriously injured as a result of that
5 carjacking.

6 Many of the charges involve the use of a firearm, one
7 of the bombs and the Ruger, in conjunction with the other
8 charges that I mentioned. Because of this, you'll have to go
9 through and assess whether each of the bombs that exploded was
10 used and whether the Ruger was carried, brandished -- which the
11 judge explained means shown -- or discharged, because the
12 evidence in this case is that all of those things happened.
13 Even though these charges capture similar conduct, they involve
14 different elements, and for that reason, the defendant is
15 guilty of those crimes as well.

16 The defendant and his brother teamed up to terrorize a
17 region in 2013. They bought bags full of bombs, planned to
18 kill even more, and by the end, they had murdered four people,
19 they had maimed 17, and they wounded hundreds, more than 240
20 others. Martin William Richard, Krystle Marie Campbell, Lingzi
21 Lu, and Officer Sean Collier are no longer with us. This is
22 the result of the defendant's choice to be a terrorist hero, to
23 make a statement. These were choices that he was proud of, and
24 it devastated the lives of those who survived.

25 This is how the defendant saw his crimes.

1 (Audio and video recording played.)

2 MR. CHAKRAVARTY: But this is the cold reality of what
3 his crimes left behind.

4 (Photographs displayed.)

5 MR. CHAKRAVARTY: Officer Collier was shot five times,
6 at least three shots in the head, two from close range. One
7 shot was between the eyes. He died of his gunshot wounds.

8 Krystle Campbell received massive blast injuries to
9 her lower extremities. Parts of her body were shredded from
10 the bomb. She lived for up to a minute while the blood seeped
11 out of her body onto the pavement. She told her friends that
12 her legs hurt, and she died from loss of blood.

13 Lingzi Lu received mass injuries all over her body.
14 She didn't even plan to be there on that day. Her leg was torn
15 open, transecting her blood vessels. She bled out as emergency
16 responders performed CPR on her.

17 And Martin Richard. His entire body was shattered.
18 It was broken, eviscerated, burned. There wasn't a part of
19 this boy's body that wasn't destroyed.

20 You'll probably never forget Bill Richard. At one
21 point he said, as only he could, "I guess we were just unlucky
22 that day." But there was nothing about this day that was a
23 twist of fate. This was a cold, calculated, terrorist act.
24 This was intentional. It was blood thirsty. It was to make a
25 point. It was, "Tell America that we will not be terrorized by

1 you anymore. We will terrorize you. We will punish you."

2 The Richard family happens to pass -- their path
3 happened to cross the defendant's that day, and the defendant
4 made them pay. He was there to punish.

5 Each of the 30 criminal charges capture the criminal
6 conduct that the defendant and his brother did. The defendant
7 ran away from Boylston Street. He ran away from Officer
8 Collier's killing at MIT. He fled the scene in Watertown, and
9 he hid in that boat, and he penned his last justification,
10 taking credit and being proud of what he had done.

11 Now, ladies and gentlemen, finally, it's the time to
12 hold him accountable, to find him responsible for each of the
13 charges in the indictment. We ask you to do that now.

14 THE COURT: I think, in light of the hour, we'll take
15 a lunch recess at this point.

16 So, jurors, we'll take the lunch recess as normal.
17 We'll resume, I guess, at two o'clock to give everybody
18 comfortable time.

19 Please, no discussion of the case, obviously, until
20 you've heard the rest of what we have to present today. And
21 I'm sure you'll find other things to talk about and engage your
22 interest during the lunch. Enjoy the lunch, and we'll see you
23 at two o'clock to continue the matter.

24 THE CLERK: All rise for the Court and the jury. The
25 Court will take the lunch recess.

1 (The Court and jury exit the courtroom and there is a
2 recess in the proceedings at 12:53 p.m.)

3 THE CLERK: All rise for the Court and the jury.

4 (The Court and jury enter the courtroom at 2:14 p.m.)

5 THE CLERK: Be seated.

6 THE COURT: All right. We're ready to continue with
7 the defendant's closing.

8 Ms. Clarke.

9 Are you using the CART computer?

10 MR. FICK: I think it's all set up, your Honor. Thank
11 you.

12 MS. CLARKE: Good afternoon.

13 THE JURORS: Good afternoon.

14 MS. CLARKE: In the past few weeks, we have come
15 face-to-face with tragedy, suffering and grief in dimensions
16 that none of us could imagine possible. We would never have
17 thought that this devastation would touch our lives so
18 directly.

19 We've heard words, we've heard screams, and we've
20 heard cries. We've seen shocking videos; we've seen horrific
21 photos; we've seen the clothes of young Martin Richard. We've
22 seen the faces of people who live daily the pain and
23 devastation that we only witnessed.

24 For this destruction, suffering and profound loss,
25 there is no excuse. No one is trying to make one. Planting

1 bombs at the Boston Marathon one year and 51 weeks ago was a
2 senseless act.

3 Jahar Tsarnaev followed his brother down Boylston
4 Street carrying a backpack with a pressure cooker bomb in it
5 and put it down in front of the Forum restaurant, knowing that
6 within minutes it would explode. Three days later, Tamerlan
7 Tsarnaev murdered Officer Collier, and Jahar was right there
8 with him.

9 Within a half an hour or so, Tamerlan -- this is
10 giving me feedback -- Tamerlan Tsarnaev held a gun to Dun
11 Meng's head, demanded him to drive, and Jahar followed in the
12 Honda. He took the ATM card, he took the code, and he stole
13 \$800 from Dun Meng's ATM account. Jahar was part of a shootout
14 in Watertown. We know that his brother had the Ruger P95
15 because he was shooting at the police. We know that Jahar had
16 a BB gun.

17 Still, he hurled explosives at the police, and when he
18 saw his brother walk into a hail of gunfire shooting, clearly
19 determined to go out in a blaze of glory, he ran to the
20 Mercedes and escaped as police riddled the Mercedes with
21 bullets. And he ran over his older brother, the brother that
22 he loved, and the brother that he followed.

23 When I talked with you almost -- just over a month
24 ago, I said to you the evidence would bear out all of the
25 events that I just talked about and that they just talked

1 about. And it has. I said to you that we would not disagree
2 with this evidence or dispute it, challenge it, and we haven't.
3 I said to you that it was inexcusable, and it is. And Jahar
4 Tsarnaev stands ready, by your verdict, to be held responsible
5 for his actions.

6 I also told you that while we agreed with the
7 prosecution on a lot, mostly the big questions in this case --
8 the who, what, where and when -- we very much disagreed about
9 the why. In order to fully understand what happened on April
10 the 15th, 2013, and the four days that followed it, it's
11 important to know who did what and why it was done. Tamerlan
12 and Jahar were brothers, but they're both individual people who
13 thought differently, acted differently and had a very different
14 role in the conspiracies charged.

15 The prosecution must believe that this is important to
16 understand their varying roles because they made an issue of it
17 and attempted to bring you evidence that Jahar Tsarnaev was an
18 equal partner with his brother and that he self-radicalized
19 himself. This is simply not true.

20 What you heard from the government, and you heard it
21 again today -- they made the bombs, they killed Officer
22 Collier, Tamerlan didn't always lead down Boylston Street, they
23 said to Dun Meng certain things -- when the evidence is that
24 Tamerlan built the bombs, Tamerlan murdered Officer Collier,
25 Tamerlan led and Jahar followed, and Tamerlan talked always to

1 Dun Meng. You remember his testimony.

2 So let's talk a little bit about what the evidence
3 does show in terms of roles. Who researched building the
4 bombs? Who bought the necessary materials? Who planned this
5 series of horrific events? And I see you don't have notes, so
6 I won't give you exhibit numbers, but I want to show you some
7 exhibits and talk with you about some of the exhibits.

8 We know that Tamerlan did Internet research about the
9 electronic parts. And you can see it here. The radio
10 transmitter receiver, the radio transmitter, the transmitter
11 receiver, the radio, all on April the 7th. You can see it; I
12 think it's -- is it on your screens? The fireworks firing
13 system. Tamerlan did that research.

14 Tamerlan's computer -- and if we could pull up the
15 next one.

16 Tamerlan's computer had a Russian translation of the
17 *Inspire* magazine. Remember that, the *Inspire* magazine,
18 bomb-making instructions. He had a sort of value-added Russian
19 translation on his computer which advised search the Internet
20 with the terms "radio detonator" and "mobile detonator." There
21 was a Russian language set of instructions on Tamerlan's
22 computer, and this is in evidence with the translations.

23 The second document was telling people how to
24 construct these bombs without blowing themselves up. Also,
25 when you're making the bomb, get rid of all the metal things,

1 as they might detonate the powder. Work only with wooden and
2 plastic things; for example, you should not use a metal bucket
3 and all that is connected to it. That was on Tamerlan's
4 computer. Those bomb-making instructions were not on Jahar's
5 computer.

6 Tamerlan bought the pressure cookers. Now, we heard
7 evidence and I think we saw the GPS maps of the January 31st
8 purchase of pressure cookers. Today the prosecutor suggested
9 to you that perhaps Tamerlan bought them. Of course Tamerlan
10 bought them because here's what we know: Tamerlan is at
11 the -- he stops at 7:45 p.m. up north of -- here's Saugus, but
12 up north, and then he comes back and he stops at 8:13 p.m., and
13 the pressure cookers are purchased at 8:38 p.m. So he's on the
14 road at 7:45, stopping at 8:13 and buying the pressure cookers
15 at 8:38 p.m.

16 Where was Jahar? He was in Dartmouth during those
17 time periods. It's not that it might have been Tamerlan buying
18 the pressure cookers; it was Tamerlan buying the pressure
19 cookers. Jahar was in Dartmouth. Well, his telephone was in
20 Dartmouth. Now, I don't know too many 19-year-old folks who
21 leave their phones and go without them. In fact, the
22 prosecutor made the point of that, how they always carry their
23 phones. And here's Jahar with an outbound text and data usage
24 on his phone making it impossible for him to have been where
25 the pressure cookers were bought and when the pressure cookers

1 were bought.

2 Tamerlan bought the -- you saw with Agent Knapp's
3 testimony that the agent that brought us the mock-up of the
4 pressure cooker bombs, and he showed you the car -- how the car
5 would be used -- the parts of the radio-controlled car would be
6 used. Tamerlan brought -- bought a radio -- the Rally Monster
7 truck. On February the 8th, it was shipped to his house. And
8 we can show what he purchased at the bottom of the receipt.

9 Can you pull it up?

10 MR. FICK: No.

11 MS. CLARKE: Well, the bottom of the receipt shows --
12 there we go -- purchasing the Rally Monster -- Off-Road Rally
13 truck. It has rechargeable batteries being purchased and
14 transmitters being purchased. Tamerlan bought those.

15 Tamerlan bought the BBs that were loaded into the
16 bombs. Now, that was another one of those series of GPS maps,
17 and then Jerry Grant, who testified, showed where Jahar's phone
18 was.

19 Here is the GPS that shows Tamerlan's journey that
20 day, and I want you to hang on in your head for a moment, if
21 you can. The first stop was at Keller Street in Manchester,
22 New Hampshire. Walmart in Keller Street in Manchester, New
23 Hampshire. There's a receipt for the purchase of BBs at
24 3:22 p.m. Keller Street. And then there's a stop at Bedford,
25 New Hampshire, and then there's a stop in Amherst, New

1 Hampshire, and another purchase of BBs at the Amherst, New
2 Hampshire, stop. The purchase was in the -- at 5:36 p.m. And
3 then there's another stop in Hudson. So there's a stop on
4 Keller Street, Bedford, Amherst, and Hudson.

5 Now, you remember Tamerlan Tsarnaev's wallet that was
6 found in the back of the Honda on Watertown. In his wallet
7 were a variety of receipts that we helped put into evidence.
8 And one of the documents in his wallet was this, with Walmart
9 and telephones, Hudson, New Hampshire; Keller Street; Bedford.
10 He had his notes in his wallet of where he had gone to purchase
11 the BBs.

12 Where was Jahar? Again, he was in Dartmouth. Data
13 usage on his phone, an outbound text on his phone at about the
14 same times that the purchases were being made.

15 It's not that possibly Tamerlan bought these items; he
16 did. Jahar wasn't with him.

17 Tamerlan bought the additional electronics on April
18 the 8th. There's a receipt, RC Cars of Boston, that was found
19 in one of the cars parked on Norfolk Street. And it's in
20 Tamerlan's name, RC Cars of Boston. And I think it was Agent
21 Knapp who again told you that that was a purchase of an
22 additional transmitter and receiver. Tamerlan did that.

23 Tamerlan searched online for the Boston Marathon. The
24 prosecution argued to you that Jahar selected the marathon.
25 Tamerlan did. Tamerlan searched the Boston Marathon before the

1 Boston Marathon. There are no such searches on Jahar's
2 computers. This is Tamerlan's Samsung laptop.

3 Tamerlan bought the backpacks. He -- again in that
4 wallet, there's a Target receipt for purchase of the backpacks.

5 Have you got that, Bill?

6 Here's the -- it's in the wallet. You'll see a
7 picture of all of the items that were in the wallet, and you'll
8 have the wallet as well, but in the wallet is the Target
9 backpack purchase. And here's the picture of Tamerlan leaving
10 the store. He was alone.

11 Now, the prosecution introduced a lot of evidence
12 found at the Norfolk Street apartment, and you would think that
13 they gave it to you because it's related in some way to bomb
14 making. But what didn't they bring to you? Whose prints were
15 all over those items?

16 Now, the cross-examination of Elena Graff, who was --
17 it's a first for her. She's an FBI fingerprint analyst called
18 by the defense to testify about fingerprints, and the
19 cross-examination [sic] is some fingerprints disappear. So all
20 of Jahar's fingerprints disappeared, and Tamerlan's stayed on
21 there. You know who made these bombs. It was Tamerlan.

22 We know from Elena Graff that Tamerlan's prints were
23 on the glass jar with the nails in it. Tamerlan's prints were
24 on the caulk gun. Tamerlan's prints were on -- well, you'll
25 find this caulk gun in several places. I think actually

1 physically in evidence, but you won't be able to find
2 fingerprints on it. I wouldn't be able to. But prints were on
3 it. And it's also in the interactive. Remember that exhibit
4 that you can click on and see the room and click on a button
5 and it shows you what was found where? It's also in that
6 exhibit. Tamerlan's prints were on the tape. Tamerlan's
7 prints were on the solder gun. In fact, in Tamerlan's wallet
8 was a Home Depot receipt for the purchase of that solder gun.

9 Tamerlan's prints were on the tape inside the toolkit.
10 Tamerlan's -- and this is just a larger picture. You can see
11 the little ring of tape where they found Tamerlan's prints and
12 the toolkit. Tamerlan's prints are on a set of pliers in the
13 toolkit. Tamerlan's prints were on the gun-cleaning kit. And
14 Tamerlan's prints were on the wiring book.

15 So the items of evidence that the prosecut- -- and the
16 government -- that the investigation seized from Norfolk, those
17 items were seized because somebody thought they were relevant
18 to bomb making. And whose prints were on them all?
19 Tamerlan's. Whose prints were not? Jahar's.

20 Elena Graff, though, FBI fingerprint analyst, also
21 told you that Tamerlan's prints were found on two items of
22 evidence seized on Boylston Street. The cardboard was seized
23 from what they called Scene A, the first bomb, and the paper
24 inside an exploded backpack seized at what they call Scene B,
25 the second bomb; and Tamerlan's prints were found on the

1 cardboard, and Tamerlan's prints were found on the paper.

2 Whose prints were not found? Jahar's.

3 There was a transmitter found at Watertown that Elena
4 Graff also analyzed, and this was the lab photo of it sort of
5 dismantled. Tamerlan's prints were found on the transmitter.

6 There was a pressure cooker lid. And you may remember
7 the picture. It's like it landed far away and in somebody's
8 backyard, the pressure cooker lid. Tamerlan's prints were
9 found on it.

10 We know that explosive residue was found on a set of
11 rubber gloves found in Tamerlan's car. Remember the agent
12 testified about that being residue? Found in Tamerlan's car.

13 And notably missing was any residue found in Jahar's
14 dorm room where he did live. There was some explosive residue
15 found in Norfolk where he didn't live. And contrary to what
16 Agent Imel -- you may remember his testimony early in the days
17 of this case -- contrary to his suggestion that Tamerlan didn't
18 always lead down Boylston, he did.

19 So let's be honest about what the evidence actually
20 shows. We are not asking you to excuse the conduct, but let's
21 look at the varying roles. Tamerlan shot and killed Officer
22 Collier. The prosecution argued they didn't know who did that
23 murder. We know. We know. Let's look at the evidence of what
24 we know.

25 First, he confessed to Dun Meng that "I just killed a

1 policeman." He confessed. You probably remember this video,
2 and I don't think we have to play it again. The prosecution
3 played it for you. This is that -- that -- you've got the
4 distant surveillance and then the up-close surveillance. Oh,
5 they're playing it.

6 (Video recording played.)

7 MS. CLARKE: Very clearly -- if you can stop it, Bill.

8 Very clearly, two people walk up to the driver's side
9 of Officer Collier's car. Two people. Very clearly. I mean,
10 to the extent anything is very clear, but you can see two
11 figures, one in front of the other, walking up to Officer
12 Collier's car.

13 Now, Nate Harman, the MIT student who came in, rides
14 by on his bicycle not long after this. He rides by on his
15 bicycle. Remember, he's going home. It's a little late, and
16 he's going to bike on home. And what Nate Harman said is, "I
17 only saw one person." And that one person was who? Jahar.
18 And that one person stood up -- had the yellow on his
19 sweatshirt and stood up, and they locked eyes for a moment.
20 That was the only person that Nate Harman saw.

21 So where was Tamerlan? If Jahar is standing up and
22 looking at Nate Harman, where is Tamerlan? As the door
23 opens -- you know, here's the car, and the door opens --
24 there's a V. Here's Jahar standing, looking at Nate Harman.
25 Where is Tamerlan? He's got to be squatted down trying to get

1 Officer Collier's gun. And getting Officer Collier's gun would
2 put blood on your hands or blood on the gloves that you were
3 wearing.

4 Now, remember those gloves were found in the driver's
5 side floor with blood on them? Whose blood? Officer Collier's
6 blood. Officer Collier's blood was found on the keys, so the
7 gloves were used to start the car.

8 Where were the -- where was Tamerlan's personal
9 belongings found?

10 And I don't know if we have it. Exhibit 879.

11 Where was Tamerlan's personal items found? Right
12 behind the driver's seat in the Honda. The bloody gloves are
13 found on the driver's side. Tamerlan's wallet was found on the
14 backseat driver's side.

15 Now, the prosecution put on Stephen Silva to say that
16 Jahar asked him for a gun. But pretty clearly that gun went to
17 who? Tamerlan.

18 In addition to the confession that he gave to Dun
19 Meng, Tamerlan did what? He searched the Ruger P95 on the
20 Internet. He had the gun at Watertown. He shot at the police
21 at Watertown. He threw the gun at the police at Watertown.
22 Tamerlan had that Ruger the entire time. Tamerlan is the one
23 who murdered Officer Collier. Whose prints were found on the
24 magazine that went in that gun? Tamerlan's.

25 Now, what does any of this matter when we know that

1 Jahar walked down Boylston Street with a bomb in a backpack and
2 put it down in front of the Forum restaurant? When he was
3 beside his brother when his brother murdered Officer Collier?
4 When we know that when Tamerlan held Dun Meng hostage, Jahar
5 took money out of his account; and we know that Jahar hurled
6 bombs at the police? What does any of what I just discussed
7 with you matter?

8 It matters because you're entitled to know the full
9 picture. It matters because it's important for us at this
10 stage to tell you as much as we could. We don't deny that
11 Jahar fully participated in the events, but if not for
12 Tamerlan, it would not have happened.

13 There's some other things that we should talk about,
14 and one is radicalization. The government wants you to believe
15 that Jahar was self-radicalized essentially from high school;
16 that he was a young extremist in the making; that he was a
17 young jihadi in high school in the making; that his tweets were
18 jihadi; and that he attended the 2012 marathon, I guess,
19 because he was planning it that much in advance.

20 They brought you Stephen Silva to suggest that there
21 was a debate in the world history class and Jahar took some
22 extreme position. He didn't.

23 They continued to flash up onto the screen but when
24 going through the computers a paper called "The Predator
25 War" -- you'll see it -- in which there was a discussion of the

1 use of drones. And what they seemingly just simply deny is
2 that was a class assignment, and instead use it to try to
3 promote that Jahar was a young jihadi in the making.

4 The government introduced the black Islamic flag and a
5 picture of Jahar in front of it suggesting self-radicalization
6 and suggesting perhaps a connection to a terrorist group. They
7 just played, to tug on your heartstrings, some nasheeds while
8 looking at the flag, suggesting that there's something ominous
9 or wrong about that flag. Their own expert, their own expert,
10 Matthew Levitt, said there's nothing radical about that flag.
11 Some groups have adopted it, but there is nothing radical about
12 the flag. It is a religious flag.

13 The government argued to you through Stephen Silva,
14 again, that Jahar went to the 2012 marathon. Now, going back
15 that far, it's hard to convince somebody you weren't where they
16 say you were that long ago. But we did the best we could to
17 provide you circumstantial evidence, and I think the
18 circumstantial evidence is pretty strong that he wasn't there.

19 There is, in evidence, again, one of the swipe card
20 sheets from UMass Dartmouth on April 15th in the afternoon,
21 about four o'clock. Jahar goes in to Maple Ridge Hall, which
22 was the dorm he was in first year. At about five o'clock, he
23 tweets, "I'm about to sleep for 20 hours." That sounds like a
24 19-year-old to me.

25 April 16th, the next day, the day of the 2012

1 marathon, at 6:42 in the morning he tweets -- and you've seen
2 this tweet quite a lot, actually -- "They will spend their
3 money, and they will regret it, and they will be defeated."
4 Now, that -- everybody debated the source of that and what that
5 meant and the context of it.

6 At 8:38 in the morning, Jahar tweets, "Hmm. Get
7 breakfast or go back to sleep? This is always a tough one."
8 It sounds like a teenager. At 8:45 he tweets, "Sleep after
9 breakfast is so much sweeter." At 8 -- at 10:56, he uses his
10 access card to come back into the dorm. At almost -- 12:46,
11 almost one o'clock, he's tweeting again.

12 At 1:30 in the morning -- again, only the teenagers
13 can do it -- he uses his access card to enter his dorm again.
14 The likelihood that this kid, who was sleeping and eating
15 breakfast and going back to sleep and about to sleep for 20
16 hours, drove to Boston and went to the 2012 marathon is slim.
17 I don't know what it means if he did, but it sure doesn't look
18 like he did.

19 The government suggested to you deep and
20 self-radicalization by the -- remember the Al_Firdausia
21 account, the seven tweets over a two -day period of time? Look
22 at them. There is no promotion of violence in there. There's
23 no promotion of extremism in there. Looking back, somebody can
24 always say that you must have been thinking something evil at
25 the time. There isn't. And regardless, it went for two days

1 and ended. Jahar lost interest in it.

2 The government then suggested that Jahar's regular
3 Twitter account -- and you may remember the agent that
4 testified and Ms. Conrad who cross-examined him about the
5 tweets. And they're suggesting that all of these tweets had
6 some ominous, evil context to them. The agent didn't bother to
7 investigate rap songs, to investigate Nas' and Eminem and Lil
8 Wayne and to investigate that the quotes from poems, from
9 horoscopes, from Comedy Central, instead telling you that this
10 is some evidence of a jihadi in the making. The entire tweet
11 is in -- it's Exhibit 3,000. It's a thick document. And it's
12 in evidence, and you can look.

13 And the government really cherry-picked the tweets
14 that they showed you and left out the ones where it was pretty
15 much teenage, adolescent sort of tweeting about girls and
16 missing class and not doing homework and sleeping.

17 If we look in the context of the allegation of
18 self-radicalization, let's look at Jahar's Internet-browsing
19 history. Remember Mark Spencer, the computer guy that came in
20 and testified? And here's Jahar's browsing history. The
21 leading candidate is -- not candidate, the leading browsing
22 search was Facebook. The next one was VK, which is the Russian
23 Facebook. This is a kid doing kid things. This is an
24 adolescent -- this is a teenager doing teenage things.

25 The government suggested to you that a representative

1 sample of the documents on Jahar's computer were all jihadi,
2 and they selected a few files from 500,000 items and thousands
3 of files on a computer and brought them to you. We do not deny
4 that he had these extremist materials on his computer. But
5 let's be honest about how prominent they were in his life and
6 when.

7 The library of extremist materials -- you remember the
8 hard drive found in Watertown -- we called it the Laurel hard
9 drive -- and it was found inside a computer bag that had
10 Tamerlan's high school graduation certificate, a travel
11 document that -- for Tamerlan. It had Tamerlan's computer in
12 it. That computer bag had the hard drive in it.

13 And what we brought to you was very clear evidence
14 through Mark Spencer that that hard drive was formatted by
15 Tamerlan's Samsung; that hard drive was loaded -- all of those
16 documents on that hard drive came from Tamerlan's Samsung
17 laptop.

18 There was a lot of discussion about complete *Inspire*.
19 That's the one that has "How to Build a Bomb in the Kitchen of
20 Your Mom" in it. A lot of discussion about that. A lot of
21 times you were shown that document.

22 But we tried to trace the history of it for you. We
23 know that Tamerlan got his -- activated Windows on his laptop.
24 I hope you're computer friendly, but after listening to how
25 much you know about people from computers, I think we may want

1 to never use one again.

2 But complete *Inspire* was on -- let me start this way:
3 Tamerlan's laptop opened Windows on December the 21st.

4 Have you got that, Bill?

5 MR. FICK: Hang on.

6 MS. CLARKE: Do you remember Mark Spencer showed you a
7 PowerPoint-slide-looking thing that had Tamerlan's laptop, the
8 Sony and the HP? And it showed when Windows was opened on all
9 of those. Essentially what that means is that's when the
10 computer -- somebody got it and started it up and began to use
11 it. And Tamerlan's laptop was -- Windows was loaded --

12 Have you got it here?

13 Windows was loaded on Tamerlan's laptop on December
14 21st, 2011. The complete *Inspire* went onto Tamerlan's laptop
15 on December 21st, 2011, almost immediately. And then we can
16 show you the flow of this complete *Inspire* magazine because it
17 goes from Tamerlan's laptop, which is the Samsung -- there's an
18 attachment of the Patriot -- the now-missing Patriot thumb
19 drive -- to the laptop on January 21st. And remember, January
20 21st is the day that Tamerlan left for Russia.

21 The file was created -- complete *Inspire* was created
22 on that Patriot thumb drive from the Samsung, and then it
23 attached -- the Patriot attached then to the Sony, and the file
24 was created on the Sony. So it came from Tamerlan's laptop to
25 the Patriot thumb drive to Jahar's laptop. That is the course

1 of the complete *Inspire* magazine. It does not mean that Jahar
2 did not have it, but we need to understand who was leading and
3 who was following.

4 The government made a -- well, we also have a chart of
5 the other *Inspire* magazines, you know, because the one was how
6 to build a bomb in the kitchen of your mom, and then there were
7 these other *Inspire* magazines, and they follow essentially the
8 same path. The Samsung attaches to the missing Patriot thumb
9 drive on January the 21st, the complete *Inspire* is created, and
10 the attachment also creates the remaining *Inspires*, and they go
11 onto the Sony, and you can see the time, 6:22, 6:24, 6:24, 25,
12 25. They go from the Samsung to the Patriot to the Sony.

13 Now, the government made a big deal about the HP
14 desktop at Norfolk and, in fact, today said that Jahar accessed
15 jihadi materials over the Christmas break on that HP. I have
16 no idea where that evidence comes from or where that suggestion
17 comes from. We do know that at, like, two in the morning on
18 January the 1st, Jahar accesses his email on that. He's
19 clearly home for Christmas break. The testimony that we heard
20 about that HP was that everybody in the household used it, that
21 it was open, and that it was clear there were multiple users.
22 And I don't know why we would suggest today that it was Jahar
23 accessing those materials and not Tamerlan.

24 Two thumb drives were found, one in the dorm room and
25 one in the Crapo landfill. Remember those? They both had

1 extremist materials on them. But what else did they also both
2 have on them? Katherine Tsarnaev, Tamerlan's wife's paycheck
3 stub and a rental application in her name. Those thumb drives,
4 fairly clearly, came from Tamerlan.

5 Let's talk for just a minute about Jahar's actions
6 after the bombing because the government makes a big deal about
7 buying the milk and going to the gym. It is bizarre. It's
8 about as bizarre as going back into the Mobil station to put
9 the Doritos back down when Tamerlan comes and says, "Hurry up."
10 It's about as disconnected as that.

11 I think what it really shows is that, overall, he
12 bought into his brother's plan and his brother's actions and,
13 as the boat writing suggests, was convinced they were right.

14 We should talk about the writings in the boat. We
15 should talk about these. You won't find them on the verdict
16 form, but you will find them in the evidence. The prosecution
17 sort of paints the picture of calm reflection inside the boat
18 and that Jahar had time to think and plan out what he was
19 doing.

20 Remember how he got there? He had gotten into the
21 Mercedes, fled into a hail of gunfire, the windshield
22 bullet-riddled. There's a series of these Mercedes pictures.
23 But you can see the bullets right at the driver's -- you can
24 see a picture where the bullets lodged into the headrest.
25 There wasn't time for calm reflection.

1 You've seen the boat. He's in the boat, and he's
2 bleeding, and you've seen the pictures in the boat of the blood
3 all over. And what does this 19-year-old do? He tries to tell
4 why they did what they did. It wasn't like it was written out
5 and ready to be distributed. It wasn't like it was a message
6 to the world. It was this 19-year-old's attempt to write about
7 why they did what they did.

8 And what does he say? "I'm jealous of my brother who
9 has received the reward of paradise. He's gone." And he tries
10 to explain why they did what they did. What he doesn't write
11 in here is what you might think a violent jihadi might write:
12 "Death to America." He doesn't write that. He doesn't
13 write -- he doesn't write, "Curse to America." He knew it all
14 along that it was wrong to take innocent lives, and he says
15 that. But he expressed the very twisted belief, the very
16 twisted belief, that his actions would make a difference.

17 The government tried to tie these writings to *Inspire*
18 magazine and some of the other extremist materials. It's not
19 on your verdict form to find, but if you look at those other
20 materials, maybe some of the ideas expressed are in there, but
21 the language is not. That's up to you to judge. And we don't
22 know whether he got that, those ideas, from *Inspire* magazine or
23 from his brother.

24 Finally, I'd like to talk with you for just a few
25 minutes about the four minutes on Boylston. The government --

1 Is that in your way?

2 THE COURT: It's blocking my view of the -- some of
3 the lawyers.

4 MS. CLARKE: How's that?

5 THE COURT: That's much better. Thank you.

6 MS. CLARKE: The government argued to you in opening
7 statement, and again now, that there were four minutes, and
8 Jahar could have changed his mind. They argued to you that
9 Jahar went to that location to target children. They argued to
10 you in opening that after reaching -- after talking with his
11 brother, he reached a safe distance and detonated the bomb.
12 There were families there.

13 And who got killed and who got hurt and who escaped
14 was inexplicable, and Jahar's actions inexcusable, but for what
15 he saw when he arrived at that tree -- and I'm going to play
16 that video again for you to see if there was any indication
17 that he walked up to that spot and targeted children. I think
18 you'll see on the clip on the video that Jahar walks up and the
19 selection was made because it was a tree. So let's...

20 (Video recording played.)

21 MS. CLARKE: You see him walking up.

22 (Video recording played.)

23 MS. CLARKE: Okay. Thank you, Bill.

24 You can judge for yourselves, but the video appears
25 that he walks up and he stops at the tree, not at the children.

1 The backpack was already down by the time of the 2:48 p.m.
2 photo that the government has shown us several times. There
3 was movement by people going and coming. It does not make it
4 better, but let's not make his intent any worse than it was.

5 The government told you in opening statement that
6 Jahar was -- when he got a safe distance away, he detonated the
7 bomb. We heard no evidence of how the second bomb was
8 detonated and by whom. The evidence does not show that he was
9 a safe distance away. You've watched it again a couple of
10 times in the prosecution's argument. What the evidence does
11 show is that he was dangerously close when the bomb exploded.

12 I'm going to stop in just a couple of minutes. And
13 the prosecutor has an opportunity to get back up here and to
14 hammer home their story again. We spent our time in this phase
15 of the case trying to correct misimpressions and trying to
16 complete the picture as best we could, given the issues that
17 you have to decide in this phase.

18 You now have to answer a whole lot of questions.
19 There are 30 complicated charges. The judge spent over an hour
20 instructing you about them. The indictment is long. The
21 instructions are long. The verdict form is 30 pages -- 31
22 pages long with a lot of questions for you to answer, for you
23 to discuss, for you to hear from each other about, for you to
24 express your opinions about. And we know that you will do that
25 thoughtfully and truthfully because it's your job and it's your

1 responsibility to do it.

2 You've heard just a very little bit about who Jahar
3 was before April the 15th, 2013. You've heard a very little
4 bit of evidence in this phase of the case about that. He was
5 19. You've seen that while he bought into the plan and bought
6 into the beliefs and passion that drove the plan and has now
7 changed many, many lives forever, including his own, he was an
8 adolescent and also doing adolescent things. He was searching
9 Facebook. He was tweeting his friends. He was texting his
10 friends. The prosecution says this was a double life. He was
11 an adolescent drawn into a passion and belief of his older
12 brother and still living a teenage life. He was flunking out
13 of school, and he was making up lame excuses about why he was
14 failing.

15 You also know from the one person who testified in
16 this phase, Stephen Silva, the one person who knew Jahar before
17 April 15, 2013, testified and told you that he never met
18 Tamerlan, but he was controlling and strict, and Jahar never
19 would introduce him to Tamerlan.

20 In the next phase of this case, you'll learn a lot
21 more. We ask you to hold your minds open. We asked you that
22 in the beginning of this case, to hold your minds open to what
23 more there is to hear, to what more there is to learn, and to
24 what more there is to understand.

25 We know that in the face of the heartbreak you've

1 watched and listened to and felt, and the horrific crimes that
2 you've been exposed to over the last month, that that is not an
3 easy task, but we ask you to do it.

4 And now when you go back to the jury room, we are not
5 asking you to go easy on Jahar. We are not asking you to not
6 hold him accountable and responsible for what he did. The
7 horrific acts that we've heard about, the death, destruction
8 and devastation that we've heard about deserve to be condemned,
9 and the time is now. I know, and we know, that by your
10 verdict, you will do what is right and what is just, and your
11 verdict will speak the truth.

12 Thank you very much.

13 THE COURT: The government has the opportunity for a
14 brief rebuttal.

15 MR. WEINREB: So now you've heard the defense all
16 spelled out for you. The defendant may be guilty, but his
17 brother is even more guilty. The thing is, that's not a
18 defense. That's just the defendant's effort to dodge full
19 responsibility for what he did.

20 Ms. Clarke told you in her opening statement that the
21 defendant wasn't going to try to sidestep responsibility for
22 what he did in this case, but that is exactly what he is trying
23 to do. His defense is that his brother was the real criminal
24 and he was just going along to get along; that his brother did
25 mostly everything, he was just present.

1 Now, there's nothing wrong with him making that
2 argument. He's entitled to try to pin the blame on somebody
3 else if that's what he wants to do. But you should see that
4 for what it is. It's an attempt to sidestep responsibility;
5 not to take responsibility.

6 It's up to you to hold the defendant fully
7 responsible. You should find him guilty because he is guilty.
8 His own actions make him guilty. And the things that his
9 brother did on his behalf also make him guilty. Don't be
10 distracted by arguments about what the defendant did versus
11 what his brother did. It makes no difference. They were
12 partners in crime. These crimes were a two-man job. Each one
13 of them had a role to play, and each one of them played a
14 critical role in each of the crimes. They were
15 co-conspirators. They were partners. And that makes them
16 equally guilty of what they did.

17 Let's take the death of Officer Collier. Ms. Clarke
18 said that Tamerlan Tsarnaev is the one who shot him. But
19 there's no evidence of that in this case. That is a perfect
20 example of an effort to sidestep responsibility; not to take
21 responsibility.

22 The video doesn't show who fired the fatal shots, but
23 it does show that the defendant and his brother walked right up
24 to that car. They approached it from behind, they walked right
25 up to the door, and they yanked it open. They knew exactly

1 what they were going to do. They must have planned it ahead of
2 time. It was a cold-blooded execution. And they couldn't have
3 done it without the defendant's Ruger.

4 The defendant leaned his whole body into the car, and
5 that's what Nate Harman saw less than ten seconds later when he
6 rode by on his bicycle. He said he saw the defendant leaning
7 all the way inside, as if he were trying to get something. The
8 defendant had either shot Officer Collier or was trying to get
9 his gun or both.

10 Officer Collier's blood was on the defendant's
11 keychain, the one he was using to drive the car that night, and
12 the gloves with Officer Collier's blood on them were at his
13 feet, the feet of the driver's side where he had been driving
14 the car.

15 There should be no doubt in your mind that the
16 defendant and his brother are equally guilty of shooting
17 Officer Collier, no matter who pulled the trigger.

18 Ms. Clarke says that Tamerlan Tsarnaev confessed to
19 the killing when he said to Dun Meng, "You heard about
20 the -- you know about the murder at MIT? I did that." Well,
21 what else was he going to say? He was the only one talking to
22 Dun Meng. Dun Meng didn't even know there was another person
23 in the picture.

24 She points out that Tamerlan Tsarnaev's prints were on
25 the cartridge in the gun, as if that proved that he's the one

1 who shot Officer Collier. But Dun Meng told you that when
2 Tamerlan pointed the gun at him, he pulled the cartridge out of
3 the gun to show it to him, to show him that the gun was loaded,
4 and that happened after the murder of Officer Collier, that's
5 when his fingers were on that cartridge, that you know about.

6 She also pointed out that he searched the word "Ruger"
7 on the Internet, but he didn't search that until March of 2013,
8 and the defendant had already gotten the gun in January or
9 February.

10 My point here isn't to try to prove to you that Jahar
11 Tsarnaev pulled the trigger, because as we told you candidly
12 from the beginning, we don't know who pulled the trigger. My
13 point is simply to point out that this is all an effort to
14 dodge responsibility; not to take responsibility. It's an
15 effort to keep trying to point the finger at somebody else,
16 even if there's no evidence of it, because the truth is the
17 defendant isn't here -- isn't trying to accept responsibility
18 for what he did; he's trying to avoid full responsibility for
19 what he did.

20 Let's take Watertown as an example. According to
21 Ms. Clarke, the evidence shows that Tamerlan Tsarnaev fired
22 every bullet out of that Ruger at the police in Watertown. But
23 is that really what the evidence shows? It seems unlikely.
24 After all, the Ruger belonged to the defendant. He, just a
25 month or two earlier, had paid \$150 up at the Manchester firing

1 range with his brother to practice firing a 9-millimeter
2 pistol. And when he did that, he listed himself as an
3 intermediate-level shooter. He helped kill Officer Collier in
4 order to get a second weapon. It's obvious that both of them
5 intended to be firing guns that night. That was the whole
6 point of killing Officer Collier. That's the whole point of
7 training to use the Ruger.

8 Sergeant MacLellan, and James Floyd, the civilian you
9 heard from, both testified they were 100 percent sure that both
10 the defendant and his brother were throwing bombs, and it makes
11 sense that when one of them was throwing bombs, the other one
12 was providing cover with the Ruger.

13 But does it really matter? Does it really matter
14 whether both of them were shooting the gun? Even if Tamerlan
15 Tsarnaev was holding the Ruger the entire time, the defendant
16 was clearly doing his part. He was lighting bombs and throwing
17 them in an effort to kill the police officers, or at least to
18 keep them at bay. He threw the pressure cooker bomb. Have no
19 doubt about that. He was getting ammunition out of the bag to
20 reload the Ruger, and you know that because his fingerprints
21 were found on the ammunition box. In Watertown, just like at
22 the marathon, just like during the kidnapping of Dun Meng, the
23 defendant and his brother were full partners. They are equally
24 guilty.

25 And think about -- more about Watertown, something

1 that Ms. Clarke didn't even mention to you. The three-point
2 turn the defendant made after his brother had already been
3 tackled and was on the ground. He tried to kill three police
4 officers by running over them. The Mercedes was pointed in the
5 other direction, away from the officers. He could have just
6 driven that way and escaped. But instead, he made a U-turn,
7 and he floored it, driving directly at those officers.

8 And why did he do it? He did it in the hopes of
9 killing three more police officers and almost doubling their
10 body count. Once again, the defense doesn't want you to
11 believe that. They don't want you to focus on that because it
12 doesn't fit in with their portrait of the defendant as just a
13 passive follower. But when the defendant attempted those
14 murders, Tamerlan was out of the picture. The defendant was
15 acting entirely on his own. It shows you how independent he
16 was. It shows you how personally committed he was, so
17 committed that he was willing to run over his own brother in
18 order to kill a few more police officers before it was all
19 over.

20 Let's talk about the carjacking and the robbery. It's
21 true, according to Dun Meng, Tamerlan Tsarnaev did most of the
22 talking in the car, but the defendant, as always, played a
23 crucial role. When the time came, he's the one who demanded
24 Dun Meng's ATM card and robbed him of \$800. That money was
25 still in his wallet the next day. And it wasn't until the

1 defendant left the car that Dun Meng was able to escape. Like
2 all the other things the brothers did that night, this was a
3 two-man job. They needed both of them to pull it off, and the
4 moment the defendant was out of the picture, the plot fell
5 apart. Tamerlan wasn't able to do it on his own. He needed
6 his brother's help. And the defendant, he needed Tamerlan's
7 help. That's what it means to be partners.

8 Who built the pressure cooker bombs and the pipe
9 bombs? The defense says it was entirely Tamerlan, but the
10 evidence suggests otherwise. Both brothers had the
11 instructions for building the bombs on their computers. You
12 heard that a lot of explosive powder was needed to build those
13 bombs, and you know that a bunch of emptied-out fireworks were
14 found in the defendant's backpack that his friends removed from
15 his dorm room and threw out that night.

16 There certainly is evidence that the bombs may have
17 been built, at least in part, at 410 Norfolk Street, and it's
18 true that Tamerlan lived there full-time in 2013, but the
19 defendant stayed there on holidays and during the summer. He
20 didn't have to spend a lot of time there to help build those
21 bombs.

22 It's also true that Tamerlan's fingerprints were found
23 on things all over his own apartment, but that's what you would
24 expect from somebody who lived in an apartment full-time. And
25 you wouldn't expect to see the same thing from somebody who was

1 just there on holidays and on weekends.

2 Also, as you heard from the fingerprint expert, the
3 presence of somebody's fingerprint on something means that they
4 touched it, but the absence of somebody's fingerprint on
5 something doesn't mean that they didn't touch it. It may just
6 mean that they didn't have sweaty fingers when they touched it.

7 Or, more likely in this case, it could simply mean
8 that the defendant was wearing gloves when he touched these
9 things. *Inspire* magazine specifically advises that you wear
10 gloves when you are building bombs. And you wear gloves for a
11 couple of reasons. One is not to leave fingerprints. One is
12 because of all the messy powder that comes out of the fireworks
13 before you put them in the bomb.

14 And you heard that surgical gloves with powder on them
15 were found on the passenger side of Tamerlan Tsarnaev's CR-V,
16 his car, the place where the defendant would have sat if they
17 were using that car to help build the bombs.

18 But more important, really, is how they used the
19 bombs. They decided to explode the bombs on Boylston Street.
20 The defendant had been there the year before. He knew how
21 crowded it would be. He decided where to plant his own bomb.
22 He chose the place where it would do the most damage.
23 Ms. Clarke has suggested to you that when he walked up there,
24 he planted it there because there was a tree. But as you could
25 see from the video, he passed numerous trees on his way to that

1 spot. It wasn't just that there was a tree. He was looking
2 for the most crowded spot he could find, one where he would do
3 the most damage.

4 And even if he didn't plant it there because there was
5 a line of kids along the railing, you know for an absolute
6 certainty that he was well aware that those children were
7 there. He's staring straight at them in the picture you saw,
8 and he looks at them many, many times in the video you saw. He
9 could, at any time, have picked up that knapsack and moved it
10 somewhere else, but he didn't, because that wouldn't have fit
11 in with the plan. The plan was to make this bombing as
12 memorable as it could possibly be, and he succeeded.

13 He's the one who called Tamerlan Tsarnaev to give him
14 the go-ahead. The defense struggled mightily in
15 cross-examination of the witnesses to try to suggest to you
16 that the 19-second phone call that's from the defendant to
17 Tamerlan Tsarnaev isn't the call that took place right before
18 the bombings, but you didn't hear Ms. Clarke talk about it in
19 her closing argument because it's obvious that that's the call
20 that took place right before the bombings.

21 You didn't hear about it because, again, it doesn't
22 fit in with the narrative of the defendant just being the
23 passive, go-along-to-get-along guy.

24 What you heard during the trial was a perfect example
25 of trying to sidestep full responsibility for what the

1 defendant did, but this one failed so clearly that it wasn't
2 worth mentioning in closing argument, from their point of view.
3 It's an inconvenient fact for them. It's something they don't
4 want you to believe. And you should view all their other
5 claims about the defendant's lack of involvement with the bombs
6 with the same skepticism that you bring to that claim and some
7 of these other claims.

8 The defense argues that Tamerlan is the one who chose
9 the marathon as the site for the bombing. Where is the
10 evidence of that? There's no evidence of that. The fact that
11 he searched for it a few days ahead of time on the Internet
12 doesn't tell you anything. He may have typed in the search on
13 his computer, but you have no idea whose idea it was in the
14 first place. There's no need to research the marathon if
15 you've been there before, and Stephen Silva testified that his
16 own twin brother and the defendant were at the marathon the
17 year before. And you have no reason to doubt that he's telling
18 you the truth. And he told you part of the reason he knew that
19 was that the defendant told him he had been at the marathon.

20 Now, the defense has tried, again mightily, to
21 convince you that he couldn't have been there because he
22 tweeted several times during that day, and he didn't tweet that
23 he was going to the marathon. If you were going down to the
24 Boston Marathon to case it out for a possible bombing, would
25 you tweet that? Of course not.

1 Once again, there's no evidence that Tamerlan Tsarnaev
2 picked the marathon as the site of the bombing. But it's
3 important for them that you think that because they don't want
4 you to hold the defendant accountable for everything that he
5 actually did in this case.

6 Ms. Clark argued that the defendant wasn't actually
7 radicalized. So how deep did his jihadi beliefs go? What's
8 the actual evidence in the case about that? Well, he had
9 terrorist writings and songs and lectures not just on his
10 computer but on every electronic device he owned: his iPods,
11 his thumb drives, the CD that he drove all the way back to
12 Watertown to get before their trip to New York. He had been
13 reading and listening to them for well over a year.

14 And you know that he had absorbed their teachings. He
15 had absorbed them well enough to tweet them to others. He had
16 absorbed them well enough to summarize them on the inside wall
17 of that boat. When he wrote that message in the boat, he
18 didn't have any books to crib from. He didn't have anyone
19 whispering in his ear what to say. He wrote about them like
20 somebody who had read and listened to and studied the material
21 over and over and over again until he really had fully absorbed
22 its lessons and was convinced of it. And you know that he had
23 absorbed his lessons and was convinced of it because he
24 believed in it enough to murder people. He believed in it
25 enough to execute a police officer in cold blood. His actions

1 speak louder than words.

2 Same thing about the defendant's tweets and his
3 searches. What do they show you? They show you the defendant
4 had two sides. Yes, he was a young man with a young man's
5 interests and beliefs and habits. That's the side that he
6 revealed to his friends. But he was also a true believer in
7 violent extremism. That's the side that he kept mostly hidden.
8 The fact that he borrows quotes from songs that he's heard to
9 express his beliefs doesn't mean he doesn't have those beliefs;
10 just the opposite. He's just finding a creative way to express
11 them.

12 And of course we didn't show you every single file on
13 his computer. We didn't show you the thousands and thousands
14 of files that -- operating system files or some random thing he
15 might have downloaded from the Internet. We showed you the
16 ones that are relevant to the charges in this case. The jihadi
17 materials on his computer weren't any less convincing to him
18 because they were outnumbered by other files on his computer,
19 and you know that because he actually carried out the bombings
20 that are recommended in those writings.

21 Ms. Clarke suggested to you that you shouldn't pay
22 much attention to what the defendant wrote in the boat because
23 of his state of mind. So what do you think was his state of
24 mind when he wrote that message to the world? Well, think
25 about it. Two days earlier, three days earlier, he had pulled

1 off an extremely successful terrorist attack, an attack that
2 received worldwide attention. After the attack, he had
3 escaped. He had then been able to hide in plain sight until
4 the time was right to attack again.

5 But by the time he snuck into that boat, things were
6 different. He had been shot, and he was bleeding. He knew the
7 police were looking for him. He knew it was just a matter of
8 time before they caught him, if he didn't die first. So he
9 knew this could be his last chance to voice his true beliefs.
10 He revealed his true self when there was no longer any reason
11 to keep it a secret.

12 The whole point of committing a terrorist attack is to
13 send a message, and the defendant wanted to send a message to
14 America that Americans are destined to lose the fight against
15 violent extremism. And he wanted to send a message to his
16 fellow jihadis. He wanted to inspire them with his words and
17 with his actions. You know that these words, the ones he wrote
18 that night as he lay there in that boat, are his deepest and
19 truest beliefs. He thought they were his final words. They
20 are how he wanted to be remembered. They are the words that he
21 thought would give meaning both to his life and to his death.

22 You know he was clear-headed and strong when he got
23 into that boat. He was clear-headed enough to smash his cell
24 phones first and to hide them. He was clear-headed enough to
25 pick the boat as a hideout. He was strong enough to climb into

1 it without a ladder, despite how high it was off the ground.
2 He was strong enough to carve words into the planks of the boat
3 that you saw.

4 The message he wrote on the wall of that boat is
5 perfectly clear. It's grammatical. It doesn't wander. It
6 makes sense. He probably wrote it as soon as he got in there.
7 You can be confident that those words are his truest beliefs
8 because when he wrote them, he had no reason to tell anything
9 other than the truth. But now that he's survived and he's on
10 trial for his life, he has every reason to back away from the
11 truth.

12 And you'll note in that message, he didn't write "we."
13 He didn't say, "This is why we did this," or "This is why we
14 did that." He said "I." It was a note about him, about who he
15 was and what he had intended to accomplish and the message he
16 wanted to send to the world and to be remembered by.

17 Ms. Clarke said that all the jihadi materials on the
18 defendant's computer came from Tamerlan in January 2012 right
19 before Tamerlan then left to take a six-month trip to Russia.
20 Even if that's true, which I'll get back to, what does it show?
21 It shows that the conspiracy dates back all the way to January
22 2012. It shows that when Tamerlan decided to go to Russia for
23 six months, the plot didn't go with him. It stayed home with
24 the defendant.

25 As Dr. Levitt told you, many, many, many people read

1 jihadi materials. They are easy to find. They're all over the
2 Internet. Many are probably exposed to them by family members,
3 by brothers, by sisters, by friends. Most people read the
4 materials and reject them. Only a tiny, tiny number read them
5 and become true believers, and only a tiny fraction of those
6 true believers actually decide to kill people.

7 Tamerlan Tsarnaev didn't turn the defendant into a
8 murderer by giving him a bunch of magazines and then
9 disappearing for six months. To shred the bodies of young
10 women and children with a homemade bomb, you've got to be
11 different from other people. And if you are the type of person
12 who can adopt a philosophy of hate and commit multiple murders
13 based on reading magazines and listening to lectures, does it
14 really matter if you got them from your brother or from some
15 other terrorist or from the Internet?

16 If you are capable of such hate, such callousness that
17 you could murder and maim nearly 20 people and then drive to
18 Whole Foods and buy milk, can you really blame it on your
19 brother for giving you some propaganda to believe?

20 In any event, there's no actual evidence of where
21 those materials came from originally. The defense's computer
22 expert acknowledged that. All you know is that some of them
23 were on many devices, including all of the defendant's
24 electronic devices. Their origin remains obscure, but he read
25 them and he believed them and he was one of those tiny few who

1 decided to act on them.

2 When two people commit a crime together, it's always
3 possible for one to point the finger at the other. Don't get
4 distracted by that. The defendant and his brother were
5 partners. Each acted on his own behalf and on the other's
6 behalf. They are equally guilty, and that's why we ask you to
7 return the only fair and just verdict in this case, which is a
8 guilty verdict on all 30 counts in the indictment.

9 Thank you.

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1 MS. CONRAD: Your Honor, may we approach?

2 THE COURT: I'll see you after I finish my
3 instructions.

4 So, jurors, you've been very patient and attendant.
5 We appreciate that. I'd ask you to bear with me for just a few
6 more minutes while I complete my instructions to you. I want
7 to talk now about how you should go about assessing the
8 evidence in the case in fulfilling your responsibility to
9 resolve the issues that are presented.

10 There are two aspects to your deliberations. First,
11 you've heard a good deal of evidence over the course of the
12 trial. You now have to decide what that evidence has proved or
13 not. It is your responsibility to determine what facts have
14 been established by the evidence. After you've made those
15 determinations, you must consider what those facts mean in
16 light of the principles regarding the elements of the charged
17 offenses that I gave to you in the earlier part of my
18 instructions; that is, do the facts as you find them establish
19 that any given charge has been proved or not?

20 It's often said that jurors such as yourselves are the
21 sole and exclusive judges of the facts of the case. You
22 determine the weight, the value, and the effect of the evidence
23 that you've heard and seen. And where there are factual
24 disputes, you try to decide on the evidence what conclusions
25 you should draw about those matters.

1 Your oath as jurors requires you to determine the
2 facts of the case without fear or favor, based solely on a fair
3 consideration of the evidence. That fundamental proposition
4 means two things: First of all, of course it means you are to
5 be completely fair-minded and impartial, swayed neither by
6 prejudice nor sympathy, by personal likes or dislikes toward
7 anybody involved in the case. Your responsibility is simply to
8 judge the true meaning of the evidence fairly and impartially.

9 It would be improper for you, for example, in reaching
10 your decision as to whether the government has sustained its
11 burden of proof to consider any feelings you might have about
12 the defendant's race, religion, national origin, sex, age. It
13 would be equally improper for you to allow any emotional
14 responses you might have to the nature of the crimes charged to
15 interfere with your decision-making in this proceeding.

16 In particular, you've seen a number of graphic
17 photographs. Photographs were admitted in evidence for the
18 purpose of helping you to understand the testimony such as by
19 showing you the conditions at a particular scene or by showing
20 the nature of the wounds received by persons. Those are, of
21 course, difficult to look at, but you should not let the
22 photographs stir up any emotions to the extent that they
23 override your careful and rational assessment of the evidence.

24 The second important point about your fair
25 consideration of the evidence is that your judgment must be

1 based solely on the evidence that has been presented in the
2 course of the case. You may not go beyond the evidence by
3 speculating or guessing what other things might be true that
4 were not shown. Your responsibility is to resolve the issues,
5 so far as you can, by your consideration of the evidence that
6 has been presented, and your conclusions should be those that
7 the evidence directs you to. If there should be issues as to
8 which the evidence is insufficient or inconclusive so that
9 you're not able to draw a firm conclusion, then you have to
10 leave any conclusion undrawn. You may only draw those
11 conclusions that the evidence supports.

12 I'm going to talk a little bit more about the evidence
13 in a minute, but let me remind you what is not evidence. I
14 told you at the beginning of the case that the lawyers'
15 summaries of the evidence in their openings, when they're
16 telling you what they expect the evidence will be, and now in
17 their closings when they try to recall it for you, those
18 summaries are not part of the evidence, which is why we don't
19 have you take notes during that period of time. They are an
20 attempt to marshal the evidence for you, to try to persuade you
21 to understand in a way that is consistent with their view of
22 the case, but to the extent your collective appreciation of the
23 evidence differs in any way from what the lawyers have said in
24 predicting it or arguing it, it is your understanding and your
25 assessment that controls. What the lawyers say cannot add or

1 subtract from the evidence. You have heard the evidence, and
2 it is your judgment on that evidence that matters.

3 I told you at the outset, and you have seen that I
4 would be ruling on questions of the admissibility of evidence
5 as they have arisen. I remind you there is no significance for
6 your purposes to any of the rulings either admitting or
7 excluding evidence. Those considerations are wholly separate
8 from the kinds of decisions you'll have to make, and you should
9 give no consideration or significance to evidence rulings.

10 I remind you that evidence that is offered but not
11 admitted is not to be considered by you. Similarly, questions
12 by the attorneys which are not answered by the witness produce
13 no evidence.

14 The indictment is not evidence. You must refer to it
15 so that you can see what the proposed charges are that you have
16 to -- because you have to test those against the evidence in
17 the case, but the indictment only proposes you, the jury,
18 decide based on the evidence whether what is proposed has been
19 proved.

20 As I've said on many occasions, you must completely
21 disregard any reports you may have read in the press, seen on
22 television, heard on the radio or viewed online. You've
23 repeatedly assured me that you have abided by my instructions
24 to avoid any such information which is not part of the
25 evidence, obviously, in the case.

1 To the extent you had any prior impressions of the
2 facts of the case from the time before you were called to be
3 jurors, you must completely set aside any such impressions now.
4 Again, in the jury selection process you assured me that you
5 could do that. And, frankly, if I had not trusted your answers
6 in that respect, you would not be sitting here today. Your
7 focus must be entirely and exclusively on the body of evidence
8 produced in the course of the trial, and it would be unfair and
9 a violation of your jurors' oath to do otherwise.

10 Now, let me address some of the things that are
11 evidence in the case. You have a very large number of
12 exhibits. Some are documents, some are audio recordings, some
13 videos, some are pictures, some are tangible objects. You'll
14 have access to all the exhibits that have been admitted in
15 evidence, and you may consider those exhibits and give them
16 whatever weight, value or significance you think they are
17 fairly entitled to receive. The judgment is entirely yours.

18 We are able to have many of the exhibits presented to
19 you -- presentable to you in digital form. You have, no doubt,
20 seen the screen on the wall in the jury room. You will get to
21 use it. It is part of what we call the "Jury Evidence
22 Recording System," or J-E-R-S. The parties put their exhibits
23 in digital form into a drive, and it is fed into the monitor.
24 You will have complete control over it. When you activate the
25 touchscreen when you go in to deliberate, you will see a prompt

1 for a brief tutorial. There's a four-minute, approximately,
2 tutorial that teaches you how to use the systems. It's very
3 simple, and similar to using an iPad or other tablet. You can
4 scroll through the exhibits, you can zoom in and out on some
5 exhibits. There is an index. And you can call up an exhibit
6 by entering the exhibit number on a keypad. You will also have
7 a paper index that will give you the listing of the exhibits.
8 You will have some video and audio recordings which are
9 playable through the JERS system.

10 Based on certain technical limitations, not all of the
11 exhibits can be displayed through JERS. For some exhibits, we
12 will give you a laptop which will hold those exhibits for your
13 use in the deliberations. It only has a very few of the trial
14 exhibits, and it otherwise does not have any programs or
15 capabilities that a laptop might otherwise have, such as
16 word-processing or access to the Internet. It's simply a
17 result of the technical limitation on the types of the files
18 that can be used on JERS. There's no special significance to
19 those that are on the laptop as opposed to those that are on
20 JERS; it's just a means by which we can present them to you.
21 Essentially, they are the interactive exhibits that you've seen
22 during the course of the trial.

23 We'll give you binders with paper versions of many of
24 the exhibits for you to use if you find it more convenient to
25 resort to the paper files than to files on the screen.

1 Many exhibits in the case have been physical objects,
2 actual items. Those are available to you as well. If you
3 would like to view any of the physical exhibits, you should
4 simply write a note indicating which exhibit or exhibits you
5 would like to view and give it to the court security officer,
6 and we will make arrangements for you to see those physical
7 objects.

8 Sometimes a particular item of evidence is received
9 for a limited purpose rather than for general consideration;
10 for example, some matters may have been admitted under a
11 limitation that they could be considered as evidence that a
12 particular event occurred, for example, rather than -- for
13 example, if somebody had said something on a particular
14 occasion or written something -- but not as evidence that any
15 affirmative assertion that was contained in it was actually
16 true or accurate.

17 As an illustration, evidence that a person said, "I'm
18 unhappy," for example, under this limitation could be used to
19 consider the fact that the person had said that, but not to
20 affirmatively prove that she was, in fact, unhappy. And I
21 remind you of that limitation, with regard to the rather few
22 circumstances when it was imposed.

23 In addition to the exhibits, of course, you have the
24 testimony of the witnesses who appeared here in the courtroom
25 to answer questions that were put to them. You ought to give

1 the testimony of each witness whatever weight, value or
2 significance in your judgment it is fairly entitled to receive.

3 With respect to each witness, you should think about
4 the testimony and decide how much value or meaning it should
5 have to fair-minded people like yourselves who are looking for
6 the truth. You may find, as you think about the evidence from
7 any particular witness, that you find credible, reliable or
8 meaningful just about everything that that witness has said,
9 perhaps just about nothing that that witness has said, or
10 perhaps something in between. Maybe there are some things from
11 a witness you find credible and reliable and other things from
12 that same witness that you are more skeptical or doubtful
13 about. There's no automatic rule. You don't have to accept
14 any given witness's testimony in total or reject it in total.
15 You should think about the testimony and accept what is
16 meaningful and reliable and reject what is not.

17 Let me suggest some useful considerations in
18 evaluating witnesses' testimony. They involve three aspects:
19 perception, memory and narration.

20 Perception: How good were the witnesses' observations
21 or perceptions of events in the first place? What were the
22 circumstances under which the witness participated things,
23 observed things and so on? And how did those circumstances
24 affect, if they did, the witness's ability later to tell you
25 reliably what had happened?

1 Memory: How accurate and reliable is the witness's
2 recollection of events? People may have varying abilities to
3 remember things accurately and to recall them. And you may
4 take that into account. Sometimes the way things happen, the
5 circumstances surrounding an event may affect the ability of
6 people to remember things accurately and reliably. For
7 example, sudden, unexpected events may be perceived and
8 remembered in a different way from events that unfold in an
9 orderly way and at a slower pace.

10 Narration: How accurate and reliable is the witness
11 in narrating or telling here in the courtroom what happened?
12 Is the testimony truthful? Is it complete? Is the witness
13 careful in describing things? Is the witness himself or
14 herself confident or perhaps uncertain about the testimony? Is
15 the witness's testimony consistent with itself or does it vary?

16 You may take into account any partiality or bias that
17 a witness may have towards one side or the other. Does the
18 witness have any reason or motive or interest in the outcome of
19 the case or anything else that would affect the witness to
20 favor one side or the other in the testimony?

21 A tendency to favor one side or the other might be
22 deliberate, an intentional effort to favor one side, or it
23 might be unconscious, arising out of some affiliation or
24 affinity with one side or the other. Again, such tendencies
25 could affect the reliability of the testimony. You ought to

1 consider whether there has been any such effect in the
2 testimony that you've heard.

3 Again, keep in mind that in every case there are
4 people who are associated with or have a connection with one
5 side or the other, and it is certainly not automatic that
6 people must, therefore, be distrusted for that reason. But
7 potential bias or partiality, conscious or not, by a witness is
8 a factor you can think about in evaluating the evidence.

9 You heard testimony from a witness, Mr. Silva, who was
10 convicted of certain crimes after pleading guilty pursuant to a
11 plea agreement that he entered into with the government. That
12 agreement is in evidence for you to review. You've heard that
13 in return for his entry of a guilty plea, the government agreed
14 to take his cooperation with the prosecution into account in
15 recommending a sentence in his criminal case with the prospect
16 that he might receive a sentence lower than what might
17 otherwise have been imposed if he had not agreed to testify
18 here.

19 It is legitimate for the government to enter into plea
20 agreements of this kind to obtain testimony from persons who
21 otherwise would be unwilling to testify. You may accept and
22 rely on the testimony of a person who testifies after entering
23 into such an agreement, and you may make factual conclusions
24 based on your acceptance of that testimony if you decide it is
25 warranted.

1 However, you should bear in mind that such a witness
2 who has entered into an agreement with the government in return
3 for the prospect of a lower sentence or other favorable
4 considerations, may have a motive to tell the government what
5 he thinks it wants to hear. And accordingly, you should
6 consider such evidence with great care and caution. However,
7 after evaluation you may, if you judge it to be appropriate,
8 accept and rely on that testimony. You may, of course, also
9 choose not to accept or rely on it.

10 You've heard testimony from witnesses who have been
11 described as experts. An expert witness has special knowledge
12 or experience that allows the witness to testify about matters
13 within that expertise and to give an opinion about issues in
14 the case based on his or her knowledge or experience. You
15 should evaluate the testimony of an expert witness with the
16 same care that you employ in evaluating the testimony of any
17 other witness. You may accept and rely on the testimony of the
18 expert, or you may reject it as you judge appropriate.

19 In weighing expert testimony, you should consider the
20 factors that generally bear upon the credibility of witnesses
21 as well as the particular experts' qualifications, such as
22 education and experience, the soundness of the reasons given
23 for any opinion, and any other evidence in the case that you
24 think is pertinent.

25 Remember that you alone decide how much of a witness's

1 testimony to believe and how much weight it should be given,
2 and that applies to experts as well as other witnesses.

3 You've heard the testimony from a number of law
4 enforcement officials. The fact that a witness may be employed
5 as a law enforcement official does not mean that his or her
6 testimony is deserving of either more or less consideration or
7 greater or lesser weight than any other witness.

8 It is legitimate for defense counsel to question the
9 credibility or reliability of a law enforcement witness on the
10 ground that his or her testimony may be colored by a personal
11 or professional interest in the outcome of the case. As with
12 any other witness, it is up to you after considering the matter
13 whether or not to accept and rely on the testimony of a law
14 enforcement witness just as with any other witness.

15 Some evidence in the case was obtained by means of
16 various investigative techniques including searches of various
17 premises. The government is permitted to use investigative
18 techniques such as these. You should not consider whether it
19 was proper or not to conduct the searches. If the techniques
20 had been improperly used, the evidence would not have been
21 permitted to be presented in the case.

22 Consider the evidence as a whole. You ought to
23 consider the evidence from each witness not only by itself in
24 isolation as if that witness were the only person to testify,
25 but also in the context of all the evidence you've heard. For

1 example, there might be a piece of evidence about which you
2 originally are a bit skeptical, and then you might hear other
3 evidence that leads you to re-examine your initial impression,
4 and you begin to trust the questioned evidence a bit more. The
5 opposite may happen, of course. You might tend to accept
6 something that sounds pretty good at first, and then as you
7 consider other pieces of evidence, you might begin to doubt
8 what you'd first accepted. So again, think of the evidence
9 sensibly as a whole as you make your judgments about it.

10 You may make inferences from the evidence. We say
11 that a fact in a case like this can be proved by either two
12 kinds of evidence, direct evidence of the fact or
13 circumstantial evidence of the fact. Direct evidence is when
14 there is a piece of evidence or a group of pieces of evidence
15 which, if accepted, tend themselves to directly prove a fact.
16 Often it might be simply an assertion by a witness.

17 Suppose somebody came into the courtroom now and said,
18 "It's raining out." You would consider and decide whether the
19 person who said it had any basis for knowing what the weather
20 was, whether they could be trusted to tell you accurately what
21 was going on. But if you were satisfied as to those matters,
22 you could accept the assertion as true and believe as a result
23 of accepting it what the weather was: that it was raining out.

24 Similarly, an exhibit or a piece of physical evidence
25 might be direct evidence of a fact. Suppose, however, that

1 instead of having somebody tell you directly what the weather
2 was like outside, the person came into the courtroom now
3 wearing a wet raincoat and folding up a wet umbrella. Without
4 any direct assertion being made about what the weather was
5 like, you would have some observation, some evidence, we might
6 say, from which you might draw the conclusion or inference that
7 it was raining out because in your common experience, wet
8 raincoats and umbrellas are evidence of that fact.

9 An inference is simply a conclusion that you might
10 draw from the available information that you have found to be
11 reliable. I take the trouble to point this out because
12 sometimes you will hear people say in casual conversation,
13 "That's just circumstantial evidence. That doesn't prove
14 anything." Well, that goes too far because, in fact,
15 circumstantial evidence can be relied on to prove things if
16 properly used.

17 If you think about it, everyone probably relies on
18 circumstantial evidence routinely through the day. You walk
19 into the kitchen and see the teakettle steaming on the stove,
20 you know enough not to put your finger on the burner because
21 you've drawn an inference about the burner being hot.

22 You must be careful, however, that the inferences you
23 draw are those that are generally supported by the information
24 that you're basing the inference on. An inference, and
25 consequently, proof of a fact by circumstantial evidence cannot

1 be an excuse for guessing or speculating. If there are
2 alternative possible inferences from the evidence, you can't
3 just pick one you happen to like. You have to be persuaded
4 that any inference you make is superior to other possible
5 inferences based on the evidence and information that you have.
6 And, of course, to the extent that you rely in a criminal case
7 on inference by circumstantial evidence, in the end your
8 conclusions still must be those that convince you beyond a
9 reasonable doubt.

10 As I reminded you at the outset of the trial, the
11 defendant is presumed to be innocent of the crimes he's charged
12 with unless and until the government proves by the evidence at
13 trial that he's guilty, and proves that beyond a reasonable
14 doubt. The burden of proof rests with the government. A
15 defendant assumes no burden to prove that he is innocent.

16 A defendant in a criminal case has a right guaranteed
17 by the Bill of Rights in our Constitution to choose not to
18 testify in the case. There may be many reasons why a defendant
19 would choose to invoke and exercise that right. You are not
20 under any circumstances to draw any inference or presumption
21 against the defendant for his decision to invoke the right and
22 to decline to testify. You should not discuss the matter. You
23 are to decide the issues in the case solely from your
24 consideration of that evidence that has been given in the case.

25 The defendant is, of course, entitled to present

1 evidence other than his own testimony. It is important for you
2 to keep in mind, however, that by presenting evidence, a
3 defendant does not presume any burden or obligation to prove
4 that he's not guilty, or to put it more colloquially, to
5 explain things.

6 A defendant's evidence is subject to the same
7 standards of scrutiny and evaluation that you give to all
8 evidence, but the burden of proof never shifts from the
9 government. The question is never: Which side has convinced
10 me; but rather, has the government convinced me beyond a
11 reasonable doubt that the defendant is guilty? If the answer
12 to that question is yes, the government is entitled to your
13 verdict of conviction. If the answer is no, then the defendant
14 is entitled to be, and must be, acquitted.

15 The burden placed upon the government to prove a
16 defendant's guilt beyond a reasonable doubt is a strict and
17 heavy burden but it is not an impossible one. It does not
18 require the government to prove a defendant's guilt beyond all
19 possible hypothetical or speculative doubt. There are probably
20 very few, if any, things in human affairs that can be proved to
21 an absolute certainty, and the law does not require that. But
22 the evidence must exclude in your minds any reasonable doubt
23 about the defendant's guilt of any crimes he's accused of.

24 A reasonable doubt may arise from the evidence
25 produced or from a lack of evidence. If you conclude the

1 evidence may reasonably permit either of two conclusions with
2 respect to a particular charge, one that the defendant is
3 guilty as charged and the other the defendant is not guilty, if
4 that's the case, then you must, in those circumstances, find
5 him not guilty.

6 Reasonable doubt exists when, after you've considered,
7 compared and weighed all the evidence using your reason and
8 common sense, you cannot say that you have a settled conviction
9 that the charge is true. Conversely, we say the fact is proved
10 beyond a reasonable doubt if, after careful consideration of
11 all the evidence, you are left with a settled conviction that
12 the charge is true. A reasonable doubt is not speculation or
13 supposition or suspicion, it is not an excuse to avoid an
14 unpleasant duty, and it is not sympathy.

15 While the law does not require proof that overcomes
16 every conceivable or possible doubt, it is not enough for the
17 government to show that a defendant's guilt is probable or
18 likely even if it seems a strong probability. The government
19 must establish each element of an offense charged by proof that
20 convinces you and leaves you with no reasonable doubt, and
21 thus, satisfies you that you can, consistently with your oath
22 as jurors, base your verdict upon it.

23 Again, if you are so convinced, then it is your duty
24 to return a verdict of guilty. If, on the other hand, you have
25 a reasonable doubt about whether the defendant is guilty of the

1 crime charged, you must give the defendant the benefit of that
2 doubt and find him not guilty.

3 Your verdict must be a unanimous one, whether it is
4 guilty or not guilty. And as I have previously told you, where
5 there are alternate ways to prove an offense under the relevant
6 statute, you must be unanimous as to the theory on which you
7 base any guilty verdict.

8 Finally, remember that in determining the guilt or
9 innocence of the defendant, the jury should not give any
10 consideration at this point to the matter of punishment. Your
11 function is to weigh the evidence in the case and to determine
12 whether the defendant is guilty or not guilty as to the charges
13 presented in the indictment based solely on the evidence.
14 Under your oath as jurors, you must not allow any possible
15 punishment which may be imposed upon the defendant to influence
16 your verdict as to guilt or not in your deliberations.

17 I'll wrap up in a minute, but let me see counsel at
18 the side.

19 (Discussion at sidebar and out of the hearing of the
20 jury:)

21 MS. CONRAD: Okay. Before I begin with the
22 instructions, may I address the government's closing and
23 rebuttal? First of all, I would like -- a portion of the
24 government's presentation, that was sort of the photo montage
25 with the nasheed playing in the background, to be made part of

1 the record in this case. And I'm moving for a mistrial based
2 on that. The apparent purpose of that, I can't imagine any
3 other purpose, is essentially to try and inflame religious or
4 ethnic prejudice. There was no relevance to any of the charges
5 here.

6 As we argued in Docket No. 279, in which we
7 successfully sought to strike betrayal of the United States as
8 an nonstatutory aggravating factor, 18 U.S.C. Section 3593(f)
9 prohibits and requires a jury to form that any penalty,
10 essentially, is not based on race, religion or national origin.

11 In this case, the government played this haunting
12 music over a photograph of the Shahada, the black flag with
13 Arabic writing, which the government's own expert testified was
14 not jihadi but was a sign of Islamic faith. It's an Islamic
15 motto. They followed that with a picture of the defendant, a
16 selfie, presumably, with one finger up, which is the Muslim
17 finger for one god, which is an expression of religious belief.
18 And then on top of that, they immediately followed that with
19 scenes of the devastation of the marathon bombing. It was
20 clearly an effort to portray the defendant as an alien and to
21 deem him as -- not just him, but his religion. And I move for
22 a mistrial based on that.

23 In addition, during Mr. Weinreb's reply, he said at
24 one point that the defendant is not trying to take
25 responsibility, suggesting that the defendant should have

1 gotten up and himself taken responsibility, which is both
2 counter to the presumption of innocence and the government
3 proof, as well as to the defendant's right not to testify. And
4 it's an improper comment on the defendant's right not to
5 testify, as was a number of comments Mr. Weinreb made in his
6 rebuttal, including, for example, "We don't know whose idea it
7 was to search for these terms."

8 As the First Circuit has made perfectly clear,
9 whenever a prosecutor says we don't know something, where the
10 only person who could address that issue is the defendant, it
11 is considered burden-shifting and an improper comment on the
12 defendant's right not to testify.

13 Mr. Weinreb also stated that there were emptied-out
14 fireworks found in Mr. Tsarnaev's dorm room. There was no
15 evidence of that. The government chose not to call Azamat to
16 testify to that, and that would be entirely improper.

17 So for all of those reasons we move for a mistrial,
18 and if the Court denies that, we would ask that the video
19 montage be made part of the record.

20 THE COURT: How do you respond to the First Amendment?

21 MR. CHAKRAVARTY: There were any number of
22 non-national origin -- and I assume what I'm hearing from
23 Ms. Conrad is it's both national origin as well as
24 religious-based attack on other people. These are items in
25 evidence which the defendant both had, and the government

1 simply juxtaposed the evidence with some of those photos. That
2 was the only -- in terms of practical -- because the record is
3 not clear as to what was actually shown. I took one piece of
4 evidence which happened to be a flag, which was in the
5 defendant's room, and as the government's own expert said, it
6 is not exclusively a Jihadi flag but that it has been corrupted
7 and it can be expressed to show a statement of deep and abiding
8 faith.

9 The audio file, which was also entitled "Ghuraba,"
10 which is "Stranger," which is a theme that we've heard
11 throughout the entire case, and it echoes the fact that the
12 defendant believes that he was one of these few Mujahid who,
13 amongst the people within the faith, a small percentage which
14 we've said throughout, including in the rebuttal, a small
15 percentage of people in the faith who believes in terrorism as
16 a means to an end, that this defendant believed, and he
17 consumed these audio files on all of his media.

18 Together it allows the jury to determine that what
19 they are viewing, as we all are, as horrific acts of terrorism,
20 that they get the perspective from what the defendant's state
21 of mind was of the same acts. That was the purpose for which
22 it was put together. It was a legitimate purpose. That was
23 evidence in the case. Evidence of his state of mind, his
24 radicalization. They were combined together and the fact that
25 it was effectual and it didn't sanitize each of these things

1 independently doesn't change the probative value of what the
2 materials were themselves, neither does it make it a backhanded
3 attack on his national origin.

4 The language of -- both the flag as well as the audio
5 file were in Arabic, not a language that the defendant speaks.
6 There's nothing inherently religious about the audio file at
7 all. Dr. Levitt explained the significance of this portable
8 inspiration, the audio files, amongst especially the radical
9 sect, and I think the evidence bears out that not only do the
10 terrorism materials talk about these nasheeds and the Shahada
11 and the statement of faith, but that the defendant himself
12 believed that. That's exactly what he wrote in the note in the
13 boat and that's exactly what he did in terms of the terrorist
14 attack. So frankly, it's --

15 THE COURT: All right. I think it was -- arguments
16 were the government's radicalization position and it was not
17 improper.

18 MS. CONRAD: Well, I still ask it be made a part of --

19 THE COURT: You may preserve it for the record.

20 MR. BRUCK: One of the last points to be made about
21 this, too, that the effect, we submit, was heightened by the
22 decision not simply to give the content of the Ghuraba, but to
23 play the actual chant, which was, as Dun Meng said, weird only
24 because of the fact that it comes from a foreign culture, which
25 is unfamiliar. This is exactly the sort of exacerbating a

1 national and cultural --

2 THE COURT: I understand the point. It is in
3 evidence, though. The jurors can listen to it on their --

4 MS. CONRAD: But it's the juxtaposition --

5 THE COURT: So let me go on to something else.

6 MR. WEINREB: Yes, your Honor. In the defense's
7 opening statement, Ms. Clarke stated that the defendant was not
8 going to sidestep responsibility for these crimes, and in the
9 very beginning of her closing argument she again emphasized
10 that the defendant accepts responsibility for these crimes.
11 That invited a response from the government that the defendant
12 was, in fact, portraying himself as accepting responsibility
13 for the crimes when, in fact, he was dodging responsibility for
14 them by attempting to shift the blame elsewhere.

15 And the government's rebuttal arguments on those two
16 points, first, on pointing that fact out to the jury, that this
17 was really an attempt to avoid responsibility, not to accept
18 responsibility, and second, by disputing the facts that
19 according to the defense, Tamerlan Tsarnaev was responsible for
20 the radicalization of the defendant.

21 As to the reference of the fireworks, I did not say
22 that the emptied-out fireworks were found in the defendant's
23 dorm room; I said that they were found in the backpack that the
24 defendants removed from his dorm room and threw away --

25 THE COURT: Right. That's what I recall.

1 MS. CONRAD: Well, there's been no evidence that
2 emptied-out fireworks were recovered from the landfill, at
3 which point it had been bulldozed at that point.

4 THE COURT: The motion for a mistrial is denied.

5 Do you have anything that you want to -- are there any
6 objections to the substantive instructions?

7 MS. CONRAD: There are. First of all --

8 MR. MELLIN: You asked, your Honor.

9 MS. CONRAD: How much time do you have? I'm just
10 kidding. The first --

11 THE COURT: I'm getting sick of hearing this song.

12 MS. CONRAD: Right? I know.

13 With respect to conspiracy, we object to not including
14 willfulness as the requirement of the mens rea required to join
15 the conspiracy as set forth in the First Circuit pattern jury
16 instructions which we provided to the Court.

17 We also object to the omission of the language from
18 the First Circuit pattern jury instructions which we also
19 submitted, that the government must prove beyond a reasonable
20 doubt that the defendant knew the essential features and
21 general aims of the conspiracy.

22 We also object to the omission of language from the
23 pattern jury instructions that proof must be based on the
24 defendant's -- proof that the defendant willfully joined the
25 conspiracy must be based on the defendant's own words and

1 actions.

2 With respect to the portion regarding the use of
3 carrying of firearms offenses, we object in relation to the
4 weapons of mass destruction. We object, as we raised in our
5 Rule 29 motion, to the notion that these were two different
6 offenses when, in fact, we believe they encompassed the same
7 offense.

8 With respect to aiding and abetting -- well, actually,
9 throughout the instructions the Court, as the government did in
10 its proposed instructions, in recounting what the charges were
11 also charges the defendant conspired with another person. It
12 also charges the defendant aided and abetted another person.
13 The other person was Tamerlan Tsarnaev. And in recounting what
14 is charged in the indictment, we believe that it should specify
15 Tamerlan Tsarnaev. The government did not -- or the indictment
16 did not say "and other persons known and unknown"; they
17 specified Tamerlan Tsarnaev, and that's what they have to
18 prove.

19 With respect to "during and in relation to" as relates
20 to use and carrying a firearm, we object to the omission of the
21 First Circuit's language; in particular, the language that it
22 must have -- the firearm must have played a role in the crime
23 or been intended by the defendant to play a role in the crime.

24 The Court's instruction took the
25 defendant -- defendant's intent out of that and simply said

1 that it must have facilitated or have the potential to
2 facilitate the crime, eliminating the requirement of the
3 defendant's intention that it play a role.

4 We also object to the instruction generally regarding
5 advanced knowledge, but also in particular, to the language
6 that said that advanced knowledge can be inferred from the fact
7 that the person continued participation after learning about
8 the other person's possession. And I would note in particular
9 that it's confusing and inarguably diluting the government's
10 burden to say in the other person's possession when, in fact,
11 the view here was use and carry.

12 So now it seems that it is sufficient for the
13 government to prove that another person possessed or -- rather
14 than used and carried. And then leaving out, of course, the
15 "in furtherance of" element that would be required if the
16 government was relying on a possession theory.

17 Also, we would object to -- the instruction that the
18 jury may find advanced knowledge if the defendant continued his
19 participation is burden-shifting.

20 Regarding Count 7 and 9, a bomb in public places
21 count, we submit that the -- as we did on March 29, that the
22 government must still prove or disprove the exemption; in other
23 words, they must prove that a victim is a national of another
24 state. Even if they proved the jurisdictional element of
25 trying to compel the United States to act differently, the

1 exemption is not confined to one particular jurisdictional
2 theory.

3 With respect to Count 19, which is the carjacking
4 count, we object to eliminating the word "knowingly" from the
5 First Circuit pattern jury instructions which are that the
6 first element is the defendant knowingly took the car as
7 opposed to just took the car, which is what the Court said.

8 With respect to "resulted in" in terms of bodily
9 injury, the Court did not define the causal relationship, and
10 we would ask the Court to instruct, as we did in our papers,
11 that it must be a but-for cause as specified by the Supreme
12 Court in *Burrage*.

13 We also object to saying that any injury that was
14 sustained while the defendant retained the car should be "while
15 retained control over the car and victim of the carjacking."
16 And I would note in particular that none of the cases the
17 government has cited, none of the cases that I have found
18 specify that the injury resulting can be to someone other than
19 the victim of the carjacking. There are cases that address
20 this in the context of sentencing guidelines. The government
21 called one of those dicta. But, in fact, it's just a
22 completely different standard because it focuses on relevant
23 conduct as opposed to the direct and proximate result of the
24 offense itself.

25 We object to the inclusion of the instruction about

1 the lawfulness of the search, and particularly, the instruction
2 that essentially suggests to the jury that the Court has
3 already passed on the propriety of the search. This is
4 unnecessary. It was not raised by the evidence nor was it
5 requested by the government.

6 And finally, just because -- oh, no. I
7 would -- sorry. I'm almost there.

8 With respect to the instruction regarding the graphic
9 nature of the photos, I just want to state for the record that
10 in light of our motion in limine, we do not believe that that
11 instruction is sufficient to cure the prejudice created.

12 And if I could just have one moment to confer with
13 co-counsel.

14 (Counsel confer off the record.)

15 MS. CONRAD: That's what I have.

16 MR. WEINREB: Your Honor, those are all legal
17 arguments.

18 THE COURT: Yeah, I don't see any need to change it.
19 There's only one thing I wanted to change -- or add to the
20 instructions that I gave, which I think is satisfactory. With
21 respect to Count 7 and the foreign national, that's in the
22 indictment. It seems to have been withdrawn by the government
23 because it's not in the form instruction.

24 I used the form basically proposed by the government
25 which was just to persuade the United States, (b) in the

1 statute rather than (f).

2 Is it correct that (f) is withdrawn, because they
3 weren't instructed on it. And if so, I should make clear that
4 in looking at that, that they should not consider that part of
5 Count 7.

6 MR. WEINREB: Or we could just redact from the --

7 THE COURT: Do you have the verdict slip?

8 MS. CONRAD: Your Honor, we don't have an objection, I
9 don't think, to changing --

10 THE COURT: It just asks the general question about
11 Count 7. It's in the body of the offense so that it doesn't
12 get highlighted.

13 MS. CONRAD: Of course we don't think either of those
14 approaches cures the issue that we raise in our Rule 29 motion.

15 THE COURT: Right. Let me just say on that, I regard
16 the exemption as an affirmative defense.

17 MS. CONRAD: I'm sorry?

18 THE COURT: I regard the exemption as an affirmative
19 request.

20 MS. CONRAD: And we disagree with that.

21 THE COURT: Yeah, okay. But I want to solve the
22 problem if they don't -- they note -- they focus on the first
23 alternative under --

24 MS. CONRAD: Well, that's the instructions.

25 MR. WEINREB: So, your Honor --

1 THE COURT: It may have flown over their head, is the
2 point, without seeing --

3 MS. CONRAD: If we start going down that road, there's
4 a lot of things we can take out. The indictment also says
5 "possession" as opposed to "use and carry."

6 MR. WEINREB: So the indictment -- I mean, the
7 instructions specify that the --

8 THE COURT: Right. Okay. Then I will have that.
9 Okay. All right.

10 MR. WEINREB: Although I do -- we would have no
11 objection to redacting the additional language.

12 THE COURT: I think that's a good idea.

13 MS. CONRAD: Well, if they're going to do that, maybe
14 they should -- the "possession in furtherance" is also in the
15 indictment and that's essentially been withdrawn by the
16 government as well and the jury hasn't been instructed on that.
17 So we certainly don't want them to start speculating about what
18 "possession in furtherance" is.

19 MR. WEINREB: If it can be redacted --

20 THE COURT: I don't see why it can't. I don't see why
21 it can't. It will take a little while to do it.

22 That will appear in every "use and carry" count?

23 MR. WEINREB: Yes.

24 THE COURT: Okay.

25 (In open court:)

1 THE COURT: I have a few final comments.

2 How you arrange your deliberations is really up to
3 you, but one of the things I suggest you do first is to select
4 one of your members to be the foreman of the jury. That person
5 will have the responsibility to, among other things, organize
6 things, but also to communicate with us when you have reached a
7 verdict.

8 You will have, as I said this morning, a written copy
9 of the instructions with you in the jury room to consult as you
10 feel necessary during the deliberations to help guide you as to
11 what the legal principles are. But if you have any questions
12 about my instructions to you about the law that you're unable
13 to answer after looking at and reviewing those instructions,
14 then you may send us a note and ask us that question. We'd
15 rather have you ask a question about a point of law and get a
16 correct answer than for you to guess or to be unsure about what
17 principles of law you should apply.

18 We cannot, however, answer any questions about the
19 facts of the case or the meaning of the evidence. Those
20 matters are entirely and exclusively matters for you, the jury,
21 to determine.

22 I note for the record that as you know you will not
23 have your cell phones or electronic devices with you during the
24 deliberations. They are collected and they'll be returned at
25 the end of the day for you. And of course overnight it will be

1 improper for you to use any of those to communicate with each
2 other or anybody else about the case, about the issues in the
3 case and, of course, to use them -- as we've been talking
4 throughout, to use them to conduct any research online or
5 otherwise.

6 By law, a deliberating jury will consist of 12 jurors.
7 Typically in longer trials such as this one, we empanel a
8 larger number than 12 to be sure that because of illness or
9 other reasons we don't lose jurors, so that we might end up
10 with fewer than 12 to deliberate at the end of the case. So we
11 must now separate from the 18 of you six who will be the
12 alternate jurors and the other 12 will deliberate.

13 So I will now reduce the jury from 18 to 12 by
14 separating by identification of those who have been selected by
15 the method that's applicable to these matters to be determined
16 to be alternate jurors.

17 You'll separate physically once you leave the room.

18 Those jurors -- those alternate jurors are still
19 important to the case because they will be available in case
20 something happens during deliberations to one of the
21 deliberating jurors and it's necessary to make a substitution.
22 In addition, the alternates will also participate in the -- any
23 second phase of the trial, if there is one, again, for the same
24 purpose of being available for service, if necessary.

25 The six alternate jurors by juror number are Juror

1 No. 552, Juror No. 567, Juror No. 588, Juror No. 598, Juror
2 No. 608 and Juror No. 638. The other jurors whose numbers I've
3 not read will be the deliberating jury.

4 For those, you will all have the notes you've taken
5 during the deliberations. Please be respectful of each other's
6 note-taking abilities and memories. Perhaps you might remember
7 from your school experiences that not everything you write down
8 is necessarily completely accurate as to what was said. So
9 when you are in the room to discuss the case, do not assume
10 that simply because something appears in somebody's notes that
11 it necessarily must have been said or presented exactly that
12 way in court. It's an aid to discussion, but principally use
13 your recollections. It's your collective memory that must
14 control as you deliberate on the verdict.

15 Deliberate with a mind towards hearing each other out,
16 considering the evidence seriously as a group, and if you can,
17 coming to an agreement.

18 Each juror is entitled to his or her own opinion and
19 each should render, in the end, a verdict which represents that
20 juror's own conscientious view of the evidence. However, that
21 doesn't mean you don't listen to each other as you deliberate,
22 present your views, consult with one another, and see whether
23 you can, without violence to your individual conscientious
24 judgment, come to a unanimous resolution of the issues
25 presented.

1 With that, jurors, we ask you now to withdraw to
2 deliberate upon the evidence and to return with your verdict.
3 We will have you get organized for a few minutes. We won't go
4 too long today. It's been a long day. And we will -- as a
5 matter of fact, I think maybe we won't do anything.

6 We'll get you organized in the back, separate the
7 alternates, and very shortly after that -- I think it's been
8 long enough -- we'll send you home. Turn the switch off. What
9 we'll do in the morning is when everybody's here at nine
10 o'clock, we'll call you into the room to record formally for
11 the record that you have returned and will begin deliberations
12 in the case, and then you'll immediately go -- that will take
13 two or three minutes to do, and then you'll begin your
14 deliberations tomorrow morning, okay?

15 So save it until then. Think of other things tonight.
16 There's a basketball game on you could probably watch. And
17 we'll get to work in the morning, all right?

18 So if all the jurors would exit, and we'll separate
19 the alternates from the jurors.

20 THE CLERK: All rise for the Court and the jury.
21 Court will be in recess.

22 (The Court and jury exit the courtroom and the
23 proceedings adjourned at 4:18 p.m.)
24
25

C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 10/29/15